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OVERSIGHT OF OLDER AMERICANS ACT ADMINISTRATION

HEARING

BEFORE THE

SELECT COMMITTEE ON AGING
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

JULY 23, 1980

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OVERSIGHT OF OLDER AMERICANS ACT ADMINISTRATION

WEDNESDAY, JULY 23, 1980

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 2 p.m., in room 2168, Rayburn House Office Building, Hon. Claude Pepper (chairman of the Select Committee on Aging) and Hon. Mario Biaggi (chairman of the Subcommittee on Human Services) presiding.

Members present: Representatives Pepper of Florida, Biaggi of New York, Roybal of California, Bouquard of Tennessee, Drinan of Massachusetts, Gudger of North Carolina, Ferraro of New York, Grassley of Iowa, Dornan of California, Green of New York, and Hopkins of Kentucky.

Staff present: Charles H. Edwards III, chief of staff; Yosef Riemer, deputy chief of staff; and Marie Brown, executive secretary, of the Select Committee on Aging. Robert B. Blancato, staff director; Mary Ann Sciarra, research assistant; Clementine Anthony, staff assistant; J. B. (Pete) Conroy, minority staff director; and Donna M. Diver, secretary, of the Subcommittee on Human Services.

OPENING STATEMENT OF CHAIRMAN CLAUDE PEPPER

The CHAIRMAN. If there are no objections, I would request that we dispense with the reading of our prepared statements so that we may give our distinguished witness thia afternoon, the eminent Secretary, an opportunity to make her statement without further delay.

Hearing no objection, it is so ordered. The prepared statements of the committee members will appear at this point in the record.

[The prepared statements of Representatives Pepper, Biaggi, Roybal, Ferraro, Grassley, and Hammerschmidt follow:]

PREPARED STATEMENT OF CHAIRMAN CLAUDE PEPPER

We are very pleased this afternoon to be able to have Patricia Harris, the very distinguished Secretary of the Department of Health and Human Services, with us to discuss a number of issues, including the Older Americans Act and possible Government efforts to ameliorate the harsh impact which the recordbreaking heat wave throughout the country is having on older persons.

I know that everyone is familiar with Secretary Harris' outstanding record of leadership in managing the Department of Health, Education and Welfare and its successor, the Department of Health and Human Services. She has played a major role in contributing to the Carter administration's efforts to best meet the needs of the American people through both existing and new programs.

We look forward to Secretary Harris' comments about the Older Americans Act, the cornerstone of this Nation's practical efforts to provide services and advocacy to the elderly.

One of the issues about which we are most concerned is the recent reorganization of the Office of Human Development Services. Many persons—both aging advocates and Government employees—raised a number of questions about this reorganization proposal when it first came to the attention of this committee during the last week in April. On the basis of these concerns, a number of the senior members of the Aging Committee wrote to Secretary Harris requesting a 60-day delay in implementation of the reorganization proposal, in order to allow sufficient time for study. We received a response almost two weeks later which, while attempting to provide information about the reorganization which had not previously been made available to the committee, failed to address the committee's request for a delay in implementation of the reorganization plan. I understand that the Senate Special Committee on Aging also requested a similar delay which the Secretary did not approve.

I am certain that many of the members of this committee are concerned about the impact which this reorganization will have on the Administration on Aging and its ability to fulfill its responsibilities under the Older Americans Act. I hope that Secretary Harris can provide us with additional information on the reorganization's impact, and, as well, reassure us that it is a sound action.

While the ultimate standard by which the reorganization must be judged is how well it is working, there is an additional concern which we cannot ignore: Specifically, was this reorganization permissible under the Older Americans Act, or is it the sort of action that is specifically prohibited by the statute? Section 201 of the Older Americans Act prohibits the delegation of any functions of the Commissioner on Aging. According to a detailed legal analysis prepared by the American Law Division of the Congressional Research Service, the reorganization plan we will discuss this afternoon violates this section of the Older Americans Act, notwithstanding the Department's argument to the contrary.

Secretary Harris, we are pleased that you are able to be with us this afternoon.

PREPARED STATEMENT OF CHAIRMAN MARIO BIAGGI

I join with Senator Claude Pepper, the Chairman of this Committee, in welcoming Patricia Harris, the distinguished Secretary of the Department of Health and Human Services.

Today's hearing will address three issues of major concern to all present: (1) The reauthorization by Congress of the Older Americans Act; (2) the reorganization of the Office of Human Development Services of the Department of Health and Human Services; and (3) the 1981 White House Conference on Aging.

Initially, it should be emphasized that under President Carter, the Older Americans Act has fared very well. Indeed, during the present Administration, funding for the Act has more than doubled despite the fact that the President otherwise reduced the federal deficit from $66 billion to $29 billion. I look forward to, and am confident that, continued progress in this area will boost our efforts to address the social and human service needs of the senior population.

Secretary Harris has advised this Committee that, due to the failure of the Office of Management and Budget to complete final action, she will be unable to provide a specific Administration proposal for the extension of the Older Americans Act. I truly regret this delay and am compelled to mention the fact that the proposal is already more than two months late. Nevertheless, I am certain that we would all appreciate a sketch of the Secretary's philosophy toward the Act as well as her assessment of its various programs.

The 1978 Amendments were among the most comprehensive in the 15 year history of the Older Americans Act. Unfortunately, despite the fact that the President signed this legislation into law in October of 1978, 18 months elapsed before the final regulations were issued on March 24, 1980. This long delay did result in some disruptions in program activity on the State and local level and I hope that we may briefly discuss this matter with the Secretary.

From the outset, the plan to reorganize the Office of Human Development Services has deeply concerned this Committee. We were advised of this decision only weeks before its scheduled implementation. Moreover, when the bipartisan leadership of this Committee joined with the leadership of the major senior citizen organizations to request a delay of 60 days in order to achieve a better understanding of the effects of the reorganization, our request was ignored.

Naturally, our concerns emanate from the possible adverse effect on the Administration on Aging. More to the point, I must question the legal authority under which the plan to reorganize the Office of Human Development Services was or-

dered. Section 201 of the Older Americans Act states that: "The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner".

The elimination of all of AoA's financial management officers at the regional level seems to constitute a delegation of the functions of the Commissioner. Moreover, we are convinced that the reorganization will have the negative effect of removing an important element of fiscal autonomy from the Administration on Aging on both the regional and national level.

Although, we have been advised that that Administration on Aging will acquire 40 new positions, little has been said as to where these individuals will be placed. It is my hope that the Secretary will not only address this issue today, but also commit herself to insuring that persons experienced in the field of Aging will be assigned to those areas where they are needed most.

I also wish to discuss with Secretary Harris the precise manner in which the reorganization will improve the thus far dismal record of Title XX support for services for the elderly. Because both provide key social and human services to older persons, Title XX should be regarded as a complement to the Older Americans Act.

In addition, I continue to be disturbed about the low status of the Administration on Aging within the Department of Health and Human Services and sincerely hope that the reorganization of the Office of Human Development Services does not represent another step backward.

Finally, I am anxious to be brought up to date on the activities undertaken thus far in association with the 1981 White House Conference on Aging. I am interested in the benefits derived from the various community forums and mini-conferences conducted to date especially as they relate to the six major issue areas identified by the Advisory Committee.

We appreciate the opportunity to discuss these issues with the Secretary and hope to maintain a positive dialogue with Ms. Harris as we work together to develop sound policies for older Americans.

Prepared Statement of Representative Edward R. Roybal

I want to commend the Chairman for holding this hearing on the reauthorization of the Older Americans Act. We are all very much aware of the increasing older population in this country. According to demographic projections, it is expected that by the year 2000 senior citizens will make up 12 percent of the general population, or 31 million elderly persons. For this reason it will be very important that we pay careful attention to the reauthorization of the Older Americans Act as well as other programs which provide services to the elderly. We need to take a good look at the structure and organization of the Older Americans Act and how effective it is in carrying out its mandate and whether its present location presents any impediments in achieving their objective.

Before we authorize the Older Americans Act, we should review the recommendations of the White House Conference on Aging scheduled for next year. We must also evaluate how changes in the Act brought about by the 1978 reauthorization have been implemented. It is unfortunate that administrative deficiencies within the Department of Health and Human Services and the Administration on Aging resulted in the publication of the Title III regulations one year after the reauthorization of the Act. This delay in publishing the regulations will make it very difficult for Congress to evaluate how the States have implemented the consolidation of Title III and Title VII, how minorities are being served under the new language in the act, how Title VI is benefiting the Indian elderly and other changes which were included in the 1978 reauthorization.

I believe we should consider delaying reauthorization of the Act until we get better information on how these changes have been carried out and wait for the recommendations of the White House Conference on Aging.

I am also concerned about the most recent reorganization within the Office of Human Development Services (HDS). There has been serious concern expressed by this Committee about the placement of the Administration on Aging within HDS and the Department. There are some very serious questions about how this reorganization is going to affect the Administration on Aging which need to be answered. I hope this hearing will provide us with those answers.

Prepared Statement of Representative Geraldine A. Ferraro

Too often, the oversight responsibilities of the Congress are forgotten as we seek to deal with immediate, and perhaps, more media-oriented issues. I am pleased that

Chairman Biaggi, in recognition of the fact that 1 out of every 10 Americans are senior citizens and, therefore, affected by national policies and programs for the elderly, has called these important oversight hearings.

I am also pleased to note that unlike many other hearings, we have a most manageable witness schedule. I anticipate that both the subcommittee members and the Secretary will have an opportunity to air their views.

While I was not a Member of Congress during the debate on the 1978 amendments to the Older American Act, I have watched the progress of the changes made at that time with great interest. I strongly believe that our laws which provide services to the elderly should be cohesive and comprehensive. Nothing is more frustrating than having the necessary funds for a senior center, but being unable to provide transportation to that facility. Few things raise the blood pressure of local service providers more than being told how and where and why to allocate their resources. And, few things raise the blood pressure of Washington officials more than writing blank checks with no assurances that the money and services will be properly directed. In light of this, I often marvel at the fact that anything gets accomplished.

The 1978 amendments to the Older Americans Act carefully balance those two competing interests in a manner which allows States and local agencies to allocate funds and services in a manner which best suits local needs. It also allows the Administration on Aging sufficient authority to insure that the State and local plans conform to the intent of the act. Finally, it provides a 3-year planning cycle which, I would hope, eliminates the problem of designing services for today with no consideration as to their applicability tomorrow.

As I said, I was not a Member of Congress which drafted those amendments, but I do know how important this subcommittee was in seeing that the education and labor committee drafted language which met the needs of our Nation's elderly. Chairman Biaggi, as a member of both of those bodies, deserves continuing appreciation for his work on that legislation.

Today we will be examining several issues of importance to this subcommitttee and to the 25 million older Americans. I am anxious to hear the testimony of the Secretary and to question her on HHS's current activities and future plans.

I commend you for calling these hearings, and I appreciate Secretary Harris making time in her busy schedule to join us today to discuss our mutual concerns.

Thank you.

Prepared Statement of Representative Charles E. Grassley

Mr. Chairman, I join you in welcoming Secretary Patricia Harris to this afternoon's hearing. We are pleased to have her personal attention as we express our concern for America's elderly and we look forward to hearing her response to some of the concerns we shall express.

The fiscal handwriting is on the wall. A proper and insistent emphasis on a balanced federal budget is accompanied by a reorientation of congressional and public thought with respect to our spending priorities. In some areas of income transfer programs, this will translate into slow growth or no growth funding.

As a committee dedicated to the security and well-being of the elderly, we shall continue to support measures that will build on the progress that older Americans have won in the past fifteen years. As a select committee, however, we must depend on other committees to convert our recommendations into legislation. We shall be diligent and persevering, but we are under no illusions. The road will be more difficult than it has been in the past.

This emphasizes the importance of oversight, which is a principal mission of our committee. We must examine the organizational structures designed to deliver goods and services to the elderly. We shall continuously assess the effectiveness of this structure in carrying out the intent of Congress with respect to program management and delivery.

We know that great savings are possible in Medicare and Medicaid through the elimination of fraud, abuse and mismanagement which currently waste billions of dollars annually. We must work closely with the Department of Human Services in this area where progress could salvage vast sums for much-needed benefits.

There are about 135 federal programs which provide direct assistance to the elderly. Properly coordinated and fitted together, these programs would deliver greatly-increased benefits at no increase in cost. The law requires such coordination and centers responsibility in the Administration on Aging. We think this coordination is poorly accomplished and shall make it a matter of our oversight.

The points I have outlined simply stress good government: efficient organization and administration, interagency program coordination, and the elimination of fraud, waste and abuse in program management.

I invite Secretary Harris to work together with the committee in these areas. Together, through oversight and cooperation, we can effect operational efficiencies and savings that will more than compensate for any slowdown in the rate of program increases for the elderly.

PREPARED STATEMENT OF REPRESENTATIVE JOHN PAUL HAMMERSCHMIDT

Mr. Chairman, I would just like to welcome Secretary Harris and say how pleased I am that she can be with us today to give us her views on the reauthorization of the Older Americans Act, the prognosis for the Office of Human Development Services (OHDS) under the reorganization plan, and the status of the 1981 White House Conference on Aging. I would also like to welcome Assistant Secretary Perales and Commissioner Benedict.

The Older Americans Act is certainly of primary interest to this committee, but since the final regulations were so recently published, I hope that we have a substantial period of time to become familiar with them before we propose any major legislative changes. And, unless we experience some significant problems under the 1978 amendments and the current regulations, we might benefit if we refrain from reauthorization until we have the recommendations that will emerge from the White House Conference on Aging in 1981.

I am glad, Madame Secretary, that you will be discussing the reorganization of the Office of Human Development Services, for there is considerable anxiety throughout the aging network. Specifically, there is concern about what these changes mean in respect to the position of the Commissioner on Aging within the structure of OHDS and where the lines of authority and responsibility are drawn with the removal of fiscal responsibilities from the Administration on Aging at the regional level. Although we applaud attempts at simplification and standardization, there are many people who believe it is not possible to separate program development, analysis, and evaluation from fiscal responsibility.

Of imminent concern is the issue mentioned by Chairman Pepper and Mr. Biaggi, providing immediate assistance to the elderly who are in enormous jeopardy due to the current heat wave. In my own State of Arkansas, people are dying at the rate of about 10 a day. I am proud that Arkansas has been very resourceful in obtaining waivers so that it could use the energy crisis assistance funds to buy 10,000 fans for older persons, but these people need some assurance that they will be able to pay the higher utility bills or many will not even plug them in. Any information that you can give us on the administration's efforts to alleviate this problem would be deeply appreciated.

I want to say that I am grateful for your responsiveness, Madame Secretary, to the concerns and interests of this committee. I am anxious to hear your testimony and to have some discussion with you.

The CHAIRMAN. At this time, I would like to submit, for the record, a paper by the American Law Division of the Congressional Research Service, concerning the authority of the Secretary of the Department of Health and Human Services to approve the transfer of functions from the Commissioner on Aging.

Hearing no objections, it is so ordered.

[The material follows:]

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, D.C., May 28, 1980.

To: House Select Committee on Aging. Attention: Charles Edwards.
From: American Law Division.
Subject: Authority of the Secretary of the Department of Health and Human Services To Approve the Transfer of Functions From The Commissioner On Aging.

I. INTRODUCTION

This memorandum is in response to your request for a legal analysis of the authority of the Secretary of the Department of Health and Human Services to approve the transfer of certain functions of the Commissioner on Aging to an office in the Department which does not report to the Commissioner. The functions in

question are "financial management responsibilities," and for purpose of this memorandum we will assume that they are non-policymaking duties. However, even under this assumption, we conclude that the Secretary is precluded from approving such a transfer by Section 201 of the Older Americans Act, 42 U.S.C. § 3011.

As most recently amended, Section 201(a) of the Older Americans Act provides: There is established in the Office of the Secretary an Administration on Aging (hereinafter in this chapter referred to as the "Administration") which shall be headed by a Commissioner on Aging (hereinafter in this chapter referred to as the "Commissioner"). Except for subchapter V of this chapter the Administration shall be the principal agency for carrying out this chapter. In the performance of his functions, the Commissioner shall be directly responsible to the Office of the Secretary. *The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner.* (Emphasis added.)

Thus, on its face, this statutory provision appears to be a clear and unambiguous prohibition against the Secretary's approving the delegation of any functions, policymaking or non-policymaking, from the Commissioner to any other officer not directly responsible to the Commissioner.

The Department of Health and Human Services asserts, on the other hand, that the legislative history of a similar prohibition against the delegation of functions from the Commissioner of Rehabilitation Services[1] indicates that the prohibition was not intended to extend to routine administrative services and that therefore such functions may also be delegated from the Commissioner on Aging. In particular the Department refers to Senate Report No. 93-1297, 93d Cong. 2d Sess. (1974), which states at page 32: " * * * (T)he clarified language with respect to delegation of functions of H.R. 14225 and this identical original bill does not prohibit the centralized administration of certain routine administrative services by the Department of Health, Education, and Welfare in support of RSA functions and programs in the categories of budget formulation, grant administration, financial administration, and personnel administration. However, it is intended that the RSA Commissioner be responsible for all policy decisions in these four areas and that this policymaking responsibility not be delegated beyond persons directly responsible to him, both at headquarters and at regional offices." * * *

II. ANALYSIS

While the legislative history behind the use of a certain phrase in one statutory provision may provide some insight as to the intent of Congress when that, or a very similar phrase, is used in another statute, one must still establish that the statutory language itself is ambiguous before resort to any legislative history is justified, *United Air Lines, Inc.* v. *McMann*, 434 U.S. 192 (1977). And if legislative history is relied upon, it cannot be used to override the literal meaning of the statutory language, unless such a literal reading would lead to an absurd result or would thwart the obvious purpose of the statute. This point may be illustrated by the recent opinion of the United States Court of Appeals for the District of Columbia Circuit in the case of *National Small Shipments Traffic Conference, Inc.* v. *Civil Aeronautics Board*, No. 78-2163 (Feb. 11, 1980), where the court explains at page 16 of the slip opinion: A court interpreting a statute is bound by the "literal or usual meaning of its words" unless this would lead to " 'absurd results * * * or would thwart the obvious purpose of the statute' * * *." * * * This case does not present an instance in which a literal interpretation of the language leads to an absurd result or conflicts with the obvious purpose of the Act. * * * "We find no mandate in logic or in case law for reliance on legislative history to reach a result contrary to the plain meaning of a statute, particularly where that plain meaning is in no way unreasonable."

In the present case Section 201 of the Older Americans Act appears to be a clear and unambiguous prohibition against the approval, by the Secretary, of any of the functions of the Commissioner on Aging, and such a prohibition does not appear to be contrary to the purposes of the Act, which as will be explained in the next section of this paper, includes the establishment of a centralized and highly visible "Administration on Aging." Thus, it appears that resort to legislative history is not appropriate for purposes of interpreting Section 201, and that this Section should be given its plain and clear meaning, which is to prohibit Secretarial approval of any delegation of functions from the Commissioner. But even if resort is made to the

[1] The prohibition may be found at 29 U.S.C. § 702(a), which states "* * * The functions of the Commissioner of Rehabilitation Services shall not be delegated to any officer not directly responsible, both with respect to program operation and administration, to the Commissioner. * * *" This provision was added in the 93d Congress by Public Law 93-516.

legislative history of Section 201 of the Older Americans Act, that history also appears to support this conclusion.

III. LEGISLATIVE HISTORY OF SECTION 201

As noted, Section 201 of the Older Americans Act presently prohibits Secretarial approval of delegations from the Commissioner. However, prior to 1974 such delegations were permitted, if the Secretary first notified Congress and consulted with the appropriate Senate and House Committees. The Senate report associated with the 1974 legislation (Public Law 93-351), explains that the additional restriction upon Secretarial authority to approve delegations from the commissioner was in response to administration plans to transfer certain authorities to regional offices not directly responsible to the Commissioner. As stated at page 8 of the report: [2]

DELEGATION OF COMMISSIONER'S FUNCTIONS

Sec. 201(a) of the Older Americans Act assigns responsibility for carrying out the Act to the Administration on Aging, which is headed by the Commissioner on Aging. The Secretary of the Department of Health, Education, and Welfare is authorized to permit the delegation of the Commissioner's functions to officials not directly responsible to the Commissioner so long as the Secretary submits a plan for such delegation to Congress. The delegation becomes effective following sixty days of continuous session after submission of the plan to Congress. The committee amendment to H.R. 11105 repeals the Secretary's authority with respect to such delegation and has the effect of requiring that the functions of the Commissioner be carried out only by him or by officials directly responsible to him.

For some time the Secretary has been seeking to implement a plan for delegating certain responsibilities for aging programs from the Commissioner on Aging—to whom they are assigned by law—to the HEW Regional Directors in the ten Federal regions. A plan for such a delegation was submitted to Congress on November 5, 1973, but was subsequently revoked by the Secretary, apparently because Congress adjourned prior to expiration of the statutorily-required sixty-day notice period. Thereafter, on March 26, 1974, another plan for delegation from the Commissioner to the Regional Directors was submitted to Congress by the Secretary. If this delegation should be in effect when this bill is enacted, the committee amendment would require the Commissioner to modify the delegation so that none of his functions are delegated except to officers directly responsible to him.

By affirming the status of the Commissioner as the official responsible for carrying out programs authorized by the Act, and by seeking to enhance the status of the Administration on Aging with HEW, the Congress intended to remedy the fragmentation and lack of centralized purpose that was the case prior to 1973. It was expected that out of this would emerge a national policy for coordinating the delivery of services to the elderly, with responsibility for implementation of this policy to be clearly lodged in an official answerable to Congress.

The proposed delegation to HEW Regional Directors runs directly contrary to these goals of the 1973 legislation. It would again fragment responsibility. Rather than one national policy, we would surely find ten regional policies. And instead of one official clearly answerable to Congress for administration of programs under the Act, there will be a host of officials making decisions who are ultimately not directly responsible to the Commissioner, regardless of all the guidelines and policies he may attempt to impose on them.

During the debate on the floor of the Senate, this proposed restriction upon the powers of the Secretary was opposed by Senator Beall who argued in favor of the Administration's planned delegation: [3]

I would like to make several * * * points as to why I believe Commissioner Flemming's approach to administering the older Americans program should be given a chance to operate before the Congress intervenes—

First: The delegated authority "will be exercised pursuant to policies, regulations, and guidelines, promulgated by the Commissioner and subject to post-audit by him."

Later in the debate, Senator Beall commented further: [4]

* * * *(We are not talking about delegating authority for making policy. The policymaking decisions and authority for establishing regulations will always remain with the Commissioner here in Washington.* What we are talking about is the flexibility that the Commissioner should have in delegating the administrative responsibility to people at the regional level who are constantly in contact with the

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[2] S. Rept. No. 93-932, 93d Cong. 2d Sess. (1974).
[3] 120 Cong. Rec. 20002 (1974).
[4] Id. at 20003.

Governors of the various states and the mayors of the various cities where these programs are placed. (Emphasis added.)

Senator Beall's characterization of the administration's planned delegation is directly supported by a letter from the Secretary of HEW to the President of the Senate which was printed, at Senator Beall's request, in the Congressional Record.[5] Thus, one may conclude that the 1974 reorganization plan did not delegate policymaking responsibilities, but only attempted to delegate the authority to act within certain policy guidelines established by the Commissioner, and subject to his post-audit review. Yet Congress felt so strongly in 1974 that this proposed delegation was contrary to the purposes of the Older Americans Act that not only was the plan rejected, but the authority of the Secretary to approve additional plans was eliminated.

Based on this legislative history, it appears that the Congressional intent behind the 1974 amendments to the Older Americans Act was to foreclose all delegations of authority from the Commissioner on Aging to officers who do not report directly to the Commissioner, whether or not these delegations include policymaking responsibilities. This legislative history, being directly associated with the Older Americans Act, would override a contrary legislative history as to the meaning to be given a similar statutory provision in the Rehabilitation Act, at least with regard to the functions of the Commissioner on Aging.

In addition to these arguments, it should be noted that the basic concept of a limitation on the authority of the Secretary to delegate functions from the Commissioner on Aging does not stem from the 1974 amendments to the Older Americans Act, but instead may be traced back to Public Law 93-29, which provided that such delegations had to be first submitted to the Congress at least 60 legislative days prior to their effective date. The legislative history of Public Law 93-29 indicates that its provisions may in turn be traced back to H.R. 15657 which was passed by both Houses of Congress during the 2d Session of the 92d Congress, but which was pocket vetoed by the President.[6] The operative language used in present law, that is, "The Secretary shall not approve any delegation of the function of the Commissioner to any other officer not directly responsible to the Commissioner," may be found in Public Law 93-29, and a similar clause was contained in H.R. 15657,[7] with these latter two provisions also containing qualifying language permitting an exception to this prohibition if Congress is given prior notification. The legislative history associated with these two provisions contains no indication that they were to be limited to policymaking functions or that an exception was to be granted for administrative duties.[8]

The legislative history noted by the Department in support of their position that non-policymaking functions may be delegated away from the Commissioner, on the other hand, is based on committee reports issued during the 2d session of the 93d Congress.[9] Therefore, it appears that Congressional consideration and use of the phrase in question limiting the authority of the Secretary to approve a delegation of functions from the Commissioner antedates the legislative history cited by the Department. Under these circumstances, it would not appear that the documents cited by the Department may be used as evidence as to the intent of Congress when it passed the language in question in the 2d session of the 92d Congress, or enacted it into law in that the 1st session of the 93d Congress.

IV. CONCLUSION

Under Section 201 of the Older Americans Act, the Secretary of the Department of Health and Human Services may not approve the delegation of any functions of the Commissioner on Aging. The Department citing legislative history associated with the Rehabilitation Act amendments of 1974, argues that this limitation does not apply to certain routine administrative non-policymaking functions. However, under well established rules of statutory construction, the legislative history of an enactment is not considered unless the statutory language is ambiguous. The statutory language in this case appears to be clear and unambiguous, and therefore resort to the legislative history does not appear to be justified in this particular

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[5] Id. at 20001.

[6] 118 Cong. Rec. 37204 (1972).

[7] The clause in H.R. 15657 stated: "The Commissioner shall not delegate any of his functions to any other officer who is not directly responsible to him * * *."

[8] See, e.g. H.R. Rept. No. 92-1203, 92d Cong. 2d Sess. (1972), which states at page 5: "* * * H.R. 15657 adds language * * * providing that the Commissioner on Aging would be directly responsible to the Secretary and would not be able to delegate *any of his functions* to any other officer who is not directly responsible to him. * * *" (Emphasis added.)

[9] The Department appears to be relying primarily on Senate Reports 93-1297 and 93-1270, both issued during the 2d session of the 93d Congress.

instance. Moreover, even if the legislative history of the 1974 amendments to the Older Americans Act is consulted, it does not support the Administration's view. On the contrary, it indicates that the 1974 restrictions were enacted in response to an Administration proposal to delegate certain non-policymaking functions from the Commissioner. Furthermore, this legislative history establishes that the legally operative language in question was not added in 1974, but rather was enacted in the 1st session of the 93d Congress, and that this legislation incorporated provisions of a bill which passed both Houses of Congress during the 2d session of the 92d Congress, but which was pocket vetoed. Therefore, the provision in question antedates the legislative history cited by the Department, and thus this legislative history would not appear to be an accurate indication of Congressional intent with regard to the Older Americans Act. Based on the above factors, we conclude that the limitation contained in Section 201 of the Older Americans Act should be applied to both policymaking and non-policymaking functions of the Commissioner.

RAYMOND NATTER,
Legislative Attorney.

The CHAIRMAN. We welcome you here Madam Secretary, and we welcome your statement.

STATEMENT OF PATRICIA ROBERTS HARRIS, SECRETARY OF HEALTH AND HUMAN SERVICES, ACCOMPANIED BY ROBERT BENEDICT, COMMISSIONER, ADMINISTRATION ON AGING; AND CESAR PERALES, ASSISTANT SECRETARY, HUMAN DEVELOPMENT SERVICES

Secretary HARRIS. Well, I started to say, Mr. Chairman, but I think I should have said Messrs. Chairpersons and members of the House Select Committee on Aging.

I am pleased to participate in this oversight hearing on programs affecting older Americans administered by the Department of Health and Human Services. We look forward to working with you and the House Education and Labor Committee during the reauthorization of the Older Americans Act.

I will respond in my testimony to the major topics outlined in your letter: The Older Americans Act, the recent reorganization of the programs that are part of Human Development Services, the procedures the Department uses to develop and issue program regulations and the application of those procedures to the Older Americans Act.

Before I address these topics, however, I would like to discuss briefly our activity in implementing the MEDIGAP bill recently passed by Congress.

We at the Department of Health and Human Services have been increasingly concerned about abuses in the sale of medicare supplemental insurance, specifically the consequences of the actions of unscrupulous agents who sell inadequate policies to the aged. As a result of this concern, provisions relating to the sale of medicare supplemental insurance, commonly referred to as MEDIGAP, were included in the social security disability amendments of 1980 Public Law 96-265. The Carter administration strongly endorsed this MEDIGAP provision and the President signed the bill on June 9, 1980.

The newly passed MEDIGAP provision requires the Secretary of Health and Human Services to establish a voluntary certification program by July 1, 1982.

The Department of Health an Human Services has begun to implement the MEDIGAP program through the following activity:

Staff and resources for the startup and operating phases of the program have been allocated;

Nominees for the Supplemental Health Insurance Panel are being evaluated with the expectation that recommendations will be made to the President by August 15 of this year;

March 1, 1981 has been established as the publication date for regulations which we have already begun drafting;

Research designs and the mechanism for soliciting proposals for the mandated studies are being prepared; and

Evaluation of the effectiveness of the Federal certification procedure and the new criminal penalties has been designed.

In addition, the Department is planning implementation of other elements of the act, including the distribution of a MEDIGAP shoppers guide and establishment of a training program. A MEDIGAP work group has been established within the Department to coordinate the various aspects of the program.

The MEDIGAP legislation helps consumers make educated choices. And in so doing, gives them important leverage which will result in broad improvements in private health insurance coverage.

Now, Messrs. Chairmen and two members of the committee, I will turn to the topics outlined in your letter of invitation.

REAUTHORIZATION OF THE OLDER AMERICANS ACT

The Older Americans Act was designed to widen opportunities for all older persons, and to improve social and nutrition services to help those who need assistance in coping with the demands of later life.

The current law was designed, at least in part, to respond to the demographic shifts that have taken place in American society over the past two decades. These trends include a dramatic increase in the life span of the average American, and a significant increase in the number of people in their seventies and eighties. For example, the number of persons more than 85 years of age is 17 times greater than it was in 1900, while the 60 plus group has multiplied only seven times. This trend is expected to continue throughout the next half century.

There is a high correlation between advancing age and the percentage of persons who are functionally disabled. Studies indicate that, among the noninstitutionalized population 65 and over, about 14 percent are unable to carry out some activities of daily living, and of that 14 percent, a third are restricted to their homes or to bed.

While most older persons are healthier, have more income and are better educated than ever before in our history, a growing subpopulation of 4 to 5 million, about 18 percent of our older people, cannot carry on normal activities of daily living. This subgroup is growing by 100,000 persons each year and will number 9 million in the year 2030.

The Older Americans Act was designed to help us adjust to such trends and a key element of the act is support for the development and operation of major systems for advocacy and service delivery on behalf of older people.

The 1978 amendements strengthened both the advocacy and the service delivery provisions of the Older Americans Act in several critical respects:

Advocacy responsibilities of the Administration on Aging and the State and area Agencies on Aging were explicitly delineated.

Set-aside provisions for ombudsman services on behalf of the older residents in long term care facilities were established to insure their funding.

Planning and management of services at the community level were strengthened:

By increasing the State and area planning cycles from 1 to 3 years in order to provide longer term and more extensive planning and reduce paperwork;

By placing planning and management responsibility for all services, social and nutrition, within the area agencies; and

By establishing a new program of home delivered meals.

Messrs. Chairpersons and members of the committee, we have had a timely and effective beginning in implementing these and other provisions of the 1978 amendments. Nevertheless, full implementation of the amendments by the States will not be completed until October of this year. Congress anticipated the need for a 2 year transition period during fiscal year 1978 and 1979, and the transition period has been used to good effect. We have developed the regulations and provided assistance to the States and communities and, as a result, all levels of the network on aging will be well prepared to meet the full requirements of the legislation, as amended in 1978, when those requirements take effect in the fall.

Full implementation of the 1978 amendments may very well reveal the need for significant legislative changes. For that reason we have decided to wait until we have had at least a full year of experience under the new amendments, and until we have had an opportunity to consider the findings and recommendations of the 1981 White House Conference on Aging, before deciding whether to submit to the Congress recommendations for substantive amendments to the act.

The CHAIRMAN. I would like the record to show the distinguished Executive Director of the White House Conference on Aging is with us this afternoon.

Thank you.

Secretary HARRIS. Therefore, we are considering a simple extension of all expenditure authorities which will expire at the end of fiscal year 1981.

REORGANIZATION OF HUMAN DEVELOPMENT SERVICES (HDS)

You have also asked, Mr. Chairman, for information on the recent reorganization of Human Development Services. I will speak briefly about the reasons for the restructuring and the goals we have set.

I decided to approve the restructuring of HDS because of other changes in the Department mandated by law. The vocational rehabilitation program and a number of supportive staff positions in HDS were transferred to the Department of Education. That made it necessary for HDS to consolidate some of its staff functions and provided an opportunity to examine ways in which we could

improve the effectiveness and efficiency of remaining program administration.

We have long recognized that effective cooperation between HDS and the States is essential if we are to provide maximum service to people in need and so we gave maximum consideration to ways in which we could provide more leadership and support to State and local efforts in human services.

As the social services arm of the Department, Human Development Services, through its components, provides program direction not only for the elderly, but also for children, youth and families, native Americans, and developmentally disabled people. Human Development Services is also responsible for the President's Committee on Mental Retardation and title XX social services funding to the States. HDS shares responsibility for the work incentive program with the Department of Labor.

Title XX, which is administered by HDS, funds the widest range of human services, including those provided to the elderly. When HDS was organized, a separate administration for title XX funded public services was established. This structure was established to promote coordination of programs within HDS, but instead the structure resulted in duplication of activity and effort, and in some cases actually hampered coordination.

Because the coordinative functions intended for the Administration of Public Service's implementation of title XX clearly could not be achieved with that duplicative structure, we determined after careful analysis and study, that the responsibility for promoting program quality, providing substantive technical assistance and program monitoring for all HDS funded social services, should be assigned to program offices such as the Administration of the Aging and the Administration of Children, Youth and Family.

The Commissioner on Aging, under the new structure, will provide leadership for all programs dealing with the needs of the elderly, including programs funded through title XX. The Commissioner's control of the quality, type and delivery of services will be significantly increased. For example, AoA staff will now participate in the review of title XX State plans. AoA, working with the Office of Program Coordination and Review Staff, will be able to insure that the needs of the elderly in the States are properly considered in the development of the plan. In addition, AoA staff will be asked to provide advice and expertise on elderly issues examined by the other program administrations. This structure should significantly strengthen our program operations.

Forty positions that were assigned to the title XX program will be transferred to the Commissioner on Aging to assist in carrying out AoA's expanded program responsibilities. Twenty of these positions will be in the regional offices, and 20 will be at headquarters. This additional staff will enable the Administration on Aging to strengthen the long term care unit, as well as the research and program development units.

Regional Program Directors for Aging will continue to report directly to the Commissioner on Aging.

Since the reorganization was announced, we have taken a number of implementing steps. HDS staff have drafted revised functional statements, working with the program administrations

and the staff offices to insure that new responsibilities are accurately selected. Staff transferred to the programs have been trained in their new responsibilities.

The fiscal year 1982 discretionary fund plans were reviewed in a collaborative manner by all of the programs involved so that the needs of each target group were taken into account. For example, in reviewing the discretionary funds plan for ACYF, the AoA staff had the opportunity to suggest ways in which the needs of older Americans could be addressed in programs proposed by the Office for Families.

We have also established two new offices under the HDS regional administrator:

One, a Regional Office of Program Coordination and Review to assist regional program staff in the review of State plans. We expect this joint review of the State aging plan and the State title XX plan will enhance programs for older Americans.

Two, a new Office of Fiscal Operations in each region to be responsible for fiscal monitoring of all HDS grantees. This office will enable HDS to make better use of personnel and provide additional help to State aging agencies.

Before I approved the reorganization, the General Counsel was asked to review the proposed plan and the statutes governing the programs in HDS. This review included section 201 of the Older Americans Act of 1965 as amended. The General Counsel found that the Secretary of Health and Human Services has full authority to make the proposed changes. A statement to that effect was included in the reorganization order printed in the May 21, 1980, Federal Register. As I have indicated, the reorganization was designed to improve program operation and I believe that I had not only the authority but also the duty to use the best structure available to me to carry out the goals of the statute under which the programs are operated.

We believe the reorganization will enhance the work of the Administration on Aging, through additional staff and more effective support structure. The result will be a more efficient use of Federal resources and increased service to those for whom the programs are designed.

DEVELOPMENT OF REGULATIONS

Finally, Mr. Chairman, you requested a "brief review of the regulatory process associated with the Older Americans Act, especially with respect to the length of the time required to promulgate regulations."

As you know, regulations for the Older Americans Act were developed in draft form by AoA, and then transmitted to HDS for initial clearance. After review by the Secretary, the draft regulations were published as a "Notice of Proposed Rule Making" (NPRM) in the Federal Register. A 60-day comment period followed their publication, and suggestions and recommendations received during the comment period were considered during the preparation of the final regulations. Reasons were cited for rejecting recommendations which were not incorporated in the final regulations.

DEVELOPMENT OF THE DRAFT TITLE III REGULATIONS

The 1978 amendments to the Older Americans Act were signed into law on October 18, 1978. The notice of proposed rule making for the revised title III was published in the Federal Register on July 31, 1979, approximately 9 months after the enactment of the amendments. During this 9-month period, the proposed regulations went through an extensive review process which included modification of the proposed regulations to incorporate a number of changes. The final rules were published in the Federal Register on March 31, 1980.

TITLE VI REGULATIONS

The title III NPRM was not the only regulation development project which AoA undertook during this period. The 1978 amendments enacted a new title VI which authorizes grants to selected Indian tribes to provide services to older native Americans.

Because the regulations for title VI were dependent in many key aspects on the title III regulations, AoA decided to develop and publish the title VI NPRM after the title III draft regulations had been published. Accordingly, the title VI NPRM was drafted and cleared by the Department at the same time—fall of 1979—that the title III regulations were being readied for final release.

Publication of the title VI NPRM occurred on December 5, 1979. Hearings were conducted in nine cities on these draft regulations during the 60-day period following publication of the NPRM.

Two hundred individuals gave testimony in person or submitted written comments. Final title VI regulations were published on July 18, 1980.

REGULATION DEVELOPMENT, AN OVERVIEW

The process of developing the title III and title VI regulations was complex and lengthy. We hope that the regulations themselves show that the time and effort expended to develop them was well spent. These regulations will carry out the goal of the 1978 amendments: To strengthen services to the elderly and improve significantly the everyday experiences to older Americans.

FUTURE POLICY DIRECTIONS AFFECTING THE AGING

In the committee's letter of invitation you invited our observations on your Committee Report 96–226, Future Direction for Aging Policy: A Human Services Model. The document contains many useful insights, and a number of the subjects addressed in the committee's report—such as long term care—are also under study in the Department. I have asked my staff to analyze carefully the committee's findings and to incorporate relevant recommendations in policy options presented to me in the coming months.

Mr. Chairman, this concludes my formal remarks. I will be happy to respond to any questions you may have.

On my right, as you requested, I have Assistant Secretary Cesar Perales of the Human Development Services, and on my left, the Commissioner on Aging, Mr. Robert Benedict.

The CHAIRMAN. Did either of you gentlemen wish to make any extra statement?

Mr. BENEDICT. No.

Mr. PERALES. No.

The CHAIRMAN. Madame Secretary, I know you have your time limitations and we don't want to impose on you.

Secretary HARRIS. I am at your service, sir.

The CHAIRMAN. Mr. Biaggi will first question you.

Mr. BIAGGI. Thank you very much, Madam Secretary, for a very comprehensive statement.

I would like to take this opportunity to welcome you and also thank you for the acknowledgment of the MEDIGAP development. You may know that this committee was the initiating factor in that undertaking.

You made reference to a number of our concerns and given the limit limitations, I believe that it is best to submit some of these questions to the Secretary in writing for her response for the record.

Secretary HARRIS. I would be pleased to do so.

[See p. 33 for questions and answers.]

Mr. BIAGGI. One of the areas which I would like to talk about, and which I have discussed with you informally, is the existing meteorological crisis which has already killed some 1,200 people, most of whom are elderly. The question is how can we deal with it and in what areas?

I submitted legislation that will hopefully be enacted. I know it is under serious consideration by the White House, yourself, and by Chairman Natcher of the Appropriations Committee.

So far we seem to have a unanimity of opinion as far as the objective is concerned to utilize some of the funding of that $1.35 billion that we enacted for heating during the cold winter months. There are some funds remaining and I hope that we can use the balance of those funds for cooling purposes or at least for using energy to alleviate the heat.

But I have three questions with relation to the senior citizens nutrition centers. Has the Department given any consideration to extending the hours in which they can remain——

Secretary HARRIS. As in all our programs that serve the aging, we have been urging the utilization of those facilities for use of the aging. I don't know whether you would like to go into detail with Commissioner Benedict. This is something we have been concerned about ever since the heat wave began, and Mr. Benedict might also comment on the CSA programs that have provided after hours space and space which is cooler.

Mr. BENEDICT. Mr. Biaggi, our reports indicate that, universally, the States are extending the hours of nutrition sites and senior centers into the evening, and that they are also expanding existing services in order to help meet the weather crises. The sites and centers are using any extra resources that they can muster for placing fans and extra cooling devices in the homes of elderly persons. They are also extending their transportation services as much as they can.

The sites and centers are getting a good bit of cooperation from the media and from volunteer organizations. They are doing about as much as they can with the resources they have. It is a tough problem but they have been very, very responsive.

Secretary HARRIS. Mr. Chairman, I did want to comment on one thing. We are in the process, through the Center for Disease Control, of examining the mortality that may be due to heat. We do not have a figure at this time, for obvious reasons, because these are data that must be derived from all the affected areas. I do not know whether that is the number, whether it is too high or whether it is too low. We expect to have it within the next 10 days to 2 weeks.

Mr. BIAGGI. In relation to the moneys I referred to, do you have any figures on how much money has been unspent from your portion?

Secretary HARRIS. No, we do not. We are in the process of ascertaining that. As you know, the money is in the field, we do not have any that we have failed to allocate, but we are checking to see whether or not the recipients have funds not yet expended, but I do not have this. We expect to have it in, we think, a matter of hours.

Mr. BIAGGI. Regarding the regulations governing the 1981 low income energy program, there is a requirement which calls for a medical certificate in order to receive funds for cooling assistance. No such requirement is needed for heating assistance. Will you consider relaxing or waiving that provision during times——

Secretary HARRIS. The States have the option for determining how to apply the cooling provisions and now have the authority to make such regulations or invoke such procedures as would make it possible for them to fund the cooling expenditures under those regulations when there are unique heat situations. We have given maximum discretion to the States in the implementation of those regulations.

Mr. PEPPER. Can you stay a little while longer?

Secretary HARRIS. Yes.

The CHAIRMAN. We will run now to vote. I hope you all can come back.

[A short recess was taken.]

The CHAIRMAN. The committee will come to order, please.

Mr. Green.

Mr. GREEN. Thank you.

Madam Secretary, there are four organizational charts that have been given us, which I guess were enclosures to your letter to Mr. Biaggi of May 13, I believe, two of them labeled current, basically showing the Headquarters Office of Human Development Services, and the major administrators of that office. Then two of them, which are unlabeled, which are prospective organization charts of the headquarters of HDS, and then the relationship between the Office of Program Integration and Review and regional offices, and there were some things I didn't quite understand from them that I would like to clarify for the record.

Secretary HARRIS. I wonder, do you have an extra copy so we can be referring to the same document?

May I say that that the name of the Office of Program Integration and Review, as a consequence of concerns expressed by some of the constituent groups, has been changed to the Office of Program Coordination and Review, as indicated in my statement.

Now, I have what I think you have, but I don't know what the source was.

Mr. GREEN. Am I correct that the current refers to the existing structure and the ones that are not so labeled are the respective structures?

Secretary HARRIS. Let me say that what was labeled current was the structure in existence prior to the reorganization. I assume that that is the one you have here?

Mr. GREEN. I think we are talking on the same wave length. I am concerned, under the reorganized structure, who has solid line as opposed to dotted line authority over the Regional Aging Office.

Secretary HARRIS. The Commissioner on Aging.

Mr. GREEN. So that continues?

Secretary HARRIS. That continues. That has not been changed.

Mr. GREEN. Under the reorganized structure will there be any change in the way in which AoA's annual budget request is originated within HDS and presented to you?

Secretary HARRIS. Not as a consequence of this reorganization. I have imposed a series of changes in the way we do the budget process, but those are departmental changes aimed at increasing the relationship of program elements to initial budget policy determination.

Mr. GREEN. Could you tell us a little bit about how those will affect AoA?

Secretary HARRIS. I think AoA will be in more places while budget policy is being made. For example, we have a Budget Policy Committee which has representatives from various parts of the Department looking at the way the Department makes the initial budget presentations to me. There are more people involved in the budget process today.

Mr. GREEN. And what will be the roll of the new Policy Review Office with respect to the agency budget priorities within HDS and how will that affect AoA?

Secretary HARRIS. I would say that with respect to the AoA budget, the Commissioner will be part of an HDS process of examining the title XX presentations as well as his own presentations. Some of that has taken place in the past and I would ask Mr. Perales to indicate the strengthening of the input of AoA as a result of reorganization as it relates to title XX.

Mr. PERALES. Well, if you are making reference to the budget process, there has been very little change, but within Human Development Services at the present time we prepare our budget, we now involve all of the Commissioners in preparing the title XX requests, but much behind that there is very little at this point. It is only when we begin implementing programs that the reorganization that we will take full advantage of the AoA input.

Mr. GREEN. Let me say I am not really sure I understand title XX. My impression is under title XX basically the allocation of title XX resources was a determination by the States and that——

Secretary HARRIS. That is true. They submit a plan, but to the extent that we are involved in reviewing that plan, we will for the first time now have the opportunity to call on the Commissioner on Aging and his representative in the field to review each and every State plan.

Mr. GREEN. How do you see that impacting on the flexibility of States having use of title XX funds? Is there a review?

Secretary HARRIS. When they come forward with a program that impacts on the welfare of the elderly, we will now have an Aging person, an expert in this area, who will be able to comment on the effectiveness of that particular program being proposed by the State.

Also, he will be able to draw on his own knowledge of AoA resources within that State, and it is that type of assistance I think we have not provided adequately in the past. I think it will help the States to provide better services.

Mr. GREEN. You basically see that as insuring some coordination between the State title XX plan and AoA direct spending in terms of the elderly?

Secretary HARRIS. That is correct.

Mr. GREEN. The question is, how resources are allocated at the State level among the various programs that could be funded under title XX. You would not, I imagine, I trust, see HEW either at a regional or national level trying to impose a decision on the States?

Secretary HARRIS. We must operate under the title XX statute and the statute determines the priorities of use of title XX funds. Now, as they determine those priorities, they do it in a programmatic way and what we have lacked in the past, even though more title XX money goes into aging programs than the categorical program money, what we have lacked is a structure, a process, for the Commissioner on Aging to make certain that as the State programs are put together, that they see the relationship between title XX funding and the categorical funding, and indeed, the State and private sector funding program.

The 1978 amendments to the Older Americans Act sets as one of its goals the concentration of funding and the coordination of funding in all aging programs. This reorganization is designed, given the strictures of title XX to make certain that we bring to bear whatever expertise and insights we have on the title XX to achieve those goals.

Mr. GREEN. Thank you, Madam Secretary.

Mr. Chairman, I would just like to insert into the record these four organizational charts so the discussion will be clear.

The CHAIRMAN. Thank you very much.

[The material submitted by Mr. Green follows:]

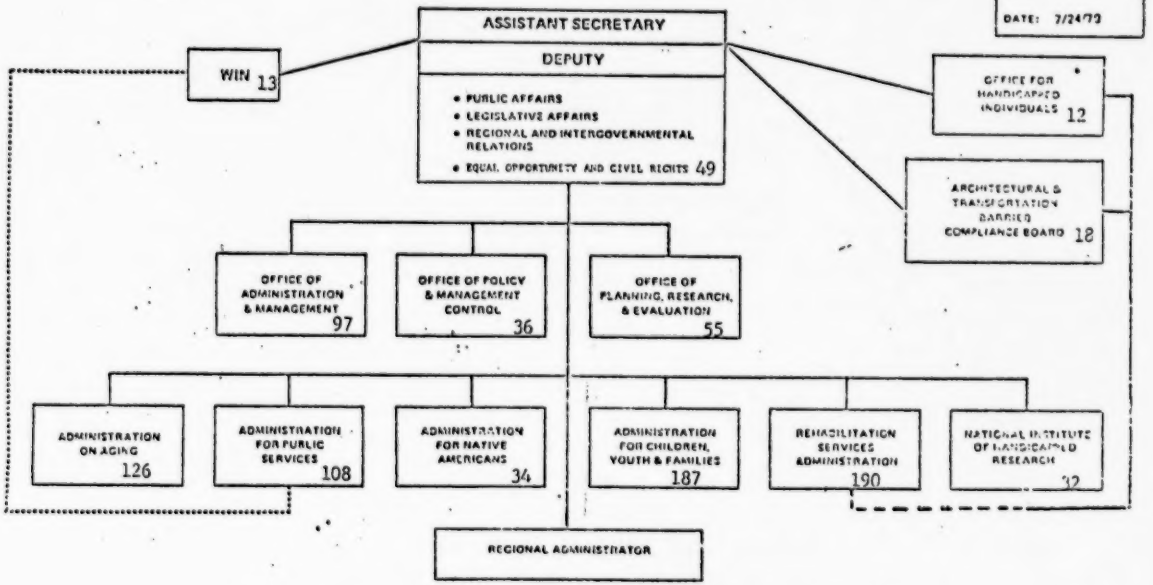
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

OFFICE OF HUMAN DEVELOPMENT SERVICES

Headquarters (Current)

APPROVED:

DATE: 7/24/73


ASSISTANT SECRETARY
DEPUTY
• PUBLIC AFFAIRS
• LEGISLATIVE AFFAIRS
• REGIONAL AND INTERGOVERNMENTAL RELATIONS
• EQUAL OPPORTUNITY AND CIVIL RIGHTS 49
WIN 13
OFFICE FOR HANDICAPPED INDIVIDUALS 12
ARCHITECTURAL & TRANSPORTATION BARRIER COMPLIANCE BOARD 18
OFFICE OF ADMINISTRATION & MANAGEMENT 97
OFFICE OF POLICY & MANAGEMENT CONTROL 36
OFFICE OF PLANNING, RESEARCH, & EVALUATION 55
ADMINISTRATION ON AGING 126
ADMINISTRATION FOR PUBLIC SERVICES 108
ADMINISTRATION FOR NATIVE AMERICANS 34
ADMINISTRATION FOR CHILDREN, YOUTH & FAMILIES 187
REHABILITATION SERVICES ADMINISTRATION 190
NATIONAL INSTITUTE OF HANDICAPPED RESEARCH 32
REGIONAL ADMINISTRATOR

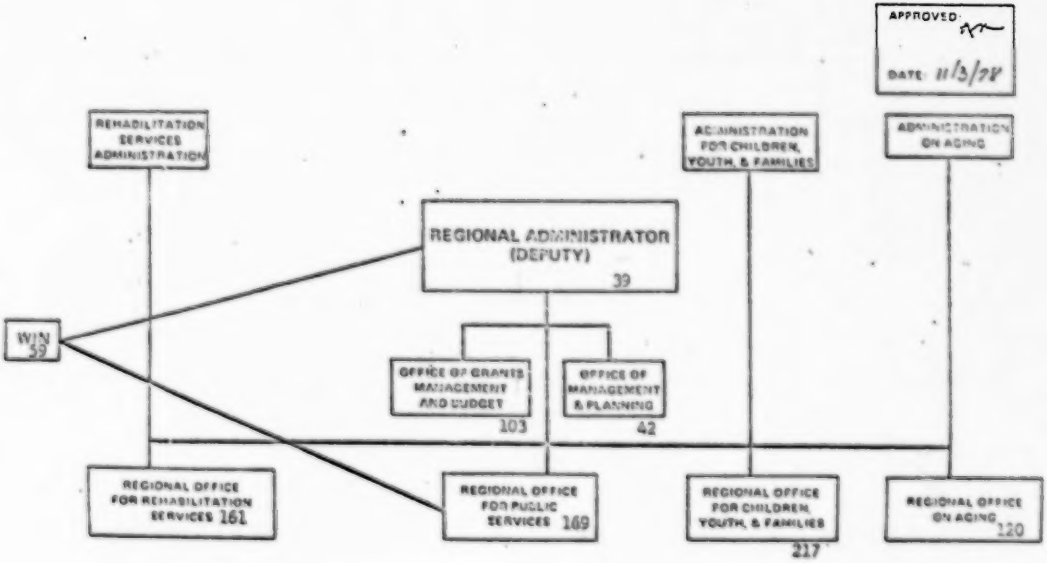
*Legislative changes will be sought to eliminate the need for a separate OHD reporting directly to the Assistant Secretary. Functions would be lodged in RSA, Office of Advocacy & Coordination.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

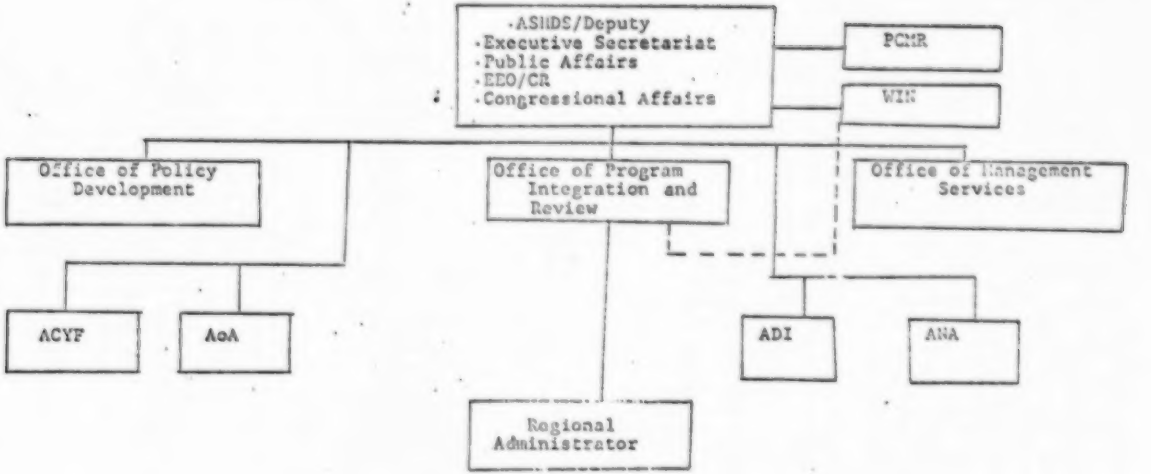
OFFICE OF HUMAN DEVELOPMENT SERVICES

REGIONAL OFFICE STRUCTURE

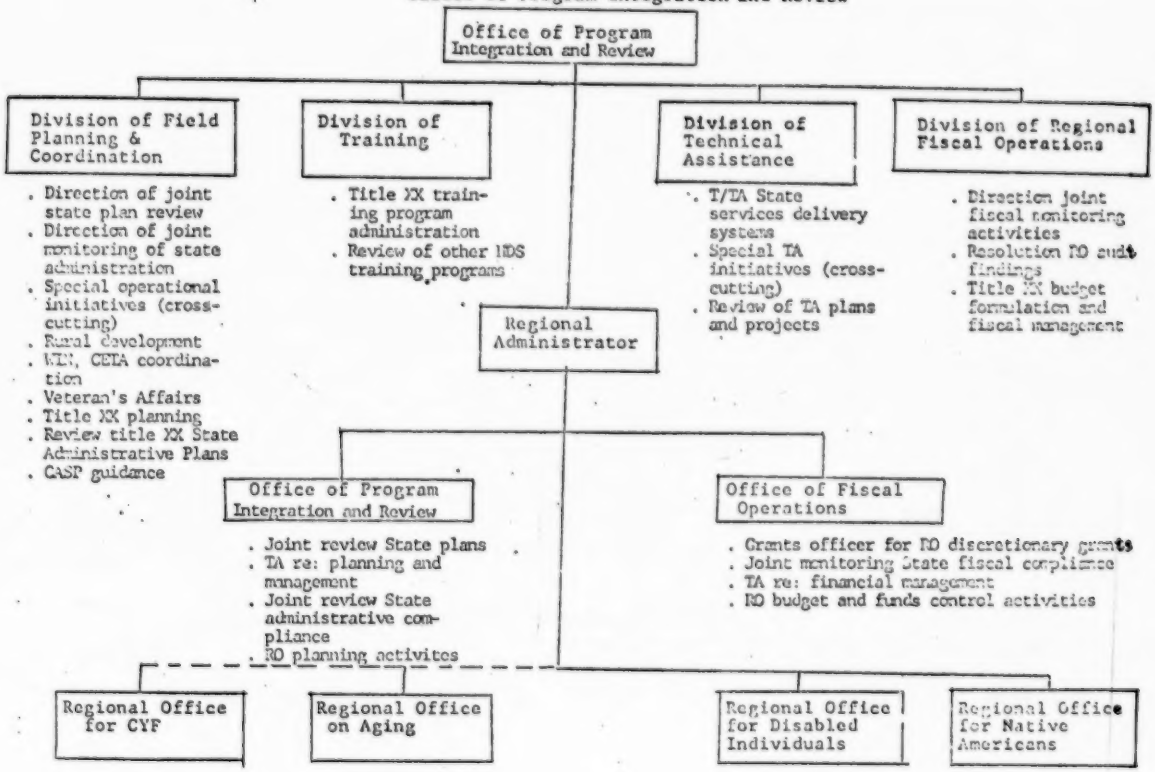
(Current)



Office of Human Development Services



Office of Program Integration and Review


Office of Program Integration and Review
Division of Field Planning & Coordination
. Direction of joint state plan review
. Direction of joint monitoring of state administration
. Special operational initiatives (cross-cutting)
. Rural development
. WIN, CETA coordination
. Veteran's Affairs
. Title XX planning
. Review title XX State Administrative Plans
. CASP guidance
Division of Training
. Title XX training program administration
. Review of other HDS training programs
Division of Technical Assistance
. T/TA State services delivery systems
. Special TA initiatives (cross-cutting)
. Review of TA plans and projects
Division of Regional Fiscal Operations
. Direction joint fiscal monitoring activities
. Resolution RO audit findings
. Title XX budget formulation and fiscal management
Regional Administrator
Office of Program Integration and Review
. Joint review State plans
. TA re: planning and management
. Joint review State administrative compliance
. RO planning activites
Office of Fiscal Operations
. Grants officer for RO discretionary grants
. Joint monitoring State fiscal compliance
. TA re: financial management
. RO budget and funds control activities
Regional Office for CYF
Regional Office on Aging
Regional Office for Disabled Individuals
Regional Office for Native Americans

The CHAIRMAN. Mr. Grassley.

Mr. GRASSLEY. Mrs. Harris, in regard to the HDS reorganization, how can you carry out the intentions that you voiced in your statement here if there was no input from the Administration on Aging regional offices and no contact on reorganization from the Administration on Aging Washington office to the regional offices, or any input from the Office on Aging or their advisory councils?

In other words, you have not solicited any grassroots input on this very important reorganization plan.

Secretary HARRIS. That is an assertion which I would deny, sir. We have consulted in a very consistent way with not only this body and the Senate but also with constituent groups. I myself have met with at least one group of constituents.

We have had full consultation. The Commissioner on Aging and I have sat together and discussed the reorganization in terms of his perception of his role and he has assured me that not only has he participated but also that he is convinced this will strengthen the AoA input into the aging process. I would deny that there had been no consultation.

Mr. GRASSLEY. I think you missed the point. I was talking about from the grassroots, from the regional offices of the AoA, contact between the AoA here and the regional offices, and then input from the area offices on aging, the triple As around the country.

Secretary HARRIS. Again, sir, I do not modify my response.

Mr. GRASSLEY. Your response was in regard to grassroots participation. I am not questioning that. Maybe you had some grassroots participation or consultation, but I am talking about specifically with agencies at the regional and local level involved with administering AoA programs?

Secretary HARRIS. Again, I don't know what it is you mean by consultation. We have talked with representatives of these groups. We obviously cannot go to 57 agencies and have a face to face with everyone of these 57, but we certainly can deal with the representatives of these groups. As I say, I do not modify my initial response to your assertion.

Mr. GRASSLEY. Would you have any sort of memos from regional offices that would imply input in the regional offices?

Secretary HARRIS. Sir, the regional offices report to the Commissioner on the Aging, and the Commissioner on the Aging is responsible for communicating to the Secretary the position of the Administration on the Aging. I am not in the habit of jumping over my top officers and going to their subordinates and asking for their opinion. I expect the top officers of my Department to reflect to me the positions of their subordinates. That is the way we are organized.

I do not have such memos. I do not ask for them. I expect my administrators to reflect accurately to me the position of the administration which they head.

Mr. GRASSLEY. Then I will ask Mr. Benedict, was there that communication?

Secretary HARRIS. He is not required by me to do a particular analysis in a way that says to any particular people do you like this or don't you. He could very well, as far as I am concerned, use his own judgment and his own experience in making a recommen-

dation to me. I say that because I want you to know I only asked him is this the kind of administrative relationship that will strengthen your ability as the Commissioner on the Aging to perform these tasks?

So he is free to respond. But I want you to know I did not give him that task specifically when he comes to me as the responsible administrator, I rely on him as the responsible administrator, which is what I understood this committee had asked the Secretary to do.

Mr. BENEDICT. Mr. Grassley, as a matter of routine, we meet with our regional administrators at least four, if not six times a year. We hold weekly, 1 hour conference telephone calls with them, during which point all issues ranging from reorganization to State plan implementation come up and are discussed.

In the course of these meetings, and telephone conferences, our regional offices have had full opportunity to be briefed on the development related to reorganization, and to share with us their own observations on what would make the reorganization more effective. I know of no one on the AoA staff who doesn't think this reorganization is not in the best interests of older people.

Mr. GRASSLEY. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Thank you very much.

Mr. Roybal.

Mr. ROYBAL. Thank you, Mr. Chairman.

Mrs. Harris, it has been the intent of Congress that the Commissioner on Aging report directly to the Secretary, and not have layers of bureaucracy between him and the Secretary. This reorganization seems to be increasing the authority of HSD over the Administration on Aging and diminishing the role of the Commissioner. Can you give the committee some assurances that this reorganization will not affect any of the authority of the Commissioner and his direct access to you?

Secretary HARRIS. Congressman, I can assure you that this reorganization increases the authority of the Commissioner on Aging. That was its purpose. I must say to you, I have been surprised at the opposition to this reorganization that has been suggested because it has brought the Commissioner into the substantive participation in funds allocation, which is greater than the issues originally under his authority and examination.

He will now be able at the time State plans come in to determine whether or not the State plan has adequately addressed—that is state plans for title XX—adequately addressed in its own terms the needs of the aging and to use whatever expertise, persuasion, help, we can to improve the use of title XX funds for the aging.

I had the sense when I got to HEW, now Health and Human Service, that the failure to have the programmatic parts of our Department related in a substantive and organic way to the operation of the programs in their area, financed by title XX, could not continue and I felt strongly then and I feel strongly now that the reorganization has strengthened every administrator in the Office of the Secretary of Human Development Services. He can, not only does he report to the Secretary regularly, with what we call one-on-one, which is pretty much five-on-five by the time we get the people into the meetings—but he is part of my weekly staff meet-

ing, and he and the Commissioner on Children, Youth and Families, all of these program areas in the Office of the Secretary component Human Development Services will continue to report the Secretary and will do so.

Mr. ROYBAL. Does that include also the fiscal operation of increasing——

Secretary HARRIS. No, it does not. The fiscal—let me say I don't know what you mean by fiscal. If you are talking about grant approvals, of course. Grant approvals will continue to be made by the Commissioner under the law. It could not be otherwise. If you are talking about technical services in the fiscal monitoring area, that is the area that we are consolidating and providing expertise in the Office of Program Coordination and Review.

Mr. GRASSLEY. But it would not decrease his authority in that area?

Secretary HARRIS. I don't know—decrease his authority?

Mr. GRASSLEY. Yes.

Secretary HARRIS. He will not have to provide staff to go out and do fiscal monitoring. He will participate in the design of fiscal monitoring systems to be used across the board by the Office of Program Coordination and Review.

Mr. GRASSLEY. He will take part then on the establishing of whatever system of operations is approved?

Secretary HARRIS. The design, he already has. He has been part of the reorganiztion process. But in addition, he will look at the design for fiscal monitoring of aging programs under title XX under his own area. What we hope to do is decrease the number of Health and Human Services elements with which the State must deal. At this moment, one monitoring element goes into monitor what is happening with title XX, another monitoring element goes into look at what is going on with title III, for example, of the Older Americans Act. Now, we will have one fiscal monitoring unit to deal with the State.

Mr. GRASSLEY. I am glad to hear that very clear explanation of the duties and participation of the Commissioner, and I say that because of the fact that many rumors have been circulated around here—we find more rumors one day than you find in the U.S. Army. So I wanted to clarify that with you, and that is the purpose for asking these questions.

May I thank you for your answers.

The CHAIRMAN. Madam Secretary, there was some advice given to this committee by the Congressional Reference Service to the effect that they didn't think you had authority to make the reorganization plan that you promulgated. They thought that you relied too much on legislative history rather than on the language of the act in deducing you had this authority.

But getting away from the technicality, as I understand it, you have preserved the prerogative and jurisdiction of the Commissioner on Aging. What you have done is to provide the rendition of financial services, and special functions, in other people who are more or less expert in that kind of operation, and, in any sense of the word, impairing the authority of the opportunity for the Commissioner on Aging to serve the cause of the elderly.

Secretary HARRIS. Quite the contrary, we have increased the ability of the Commissioner on Aging to serve the cause of the aging. He has a budget of, I think—I am terrible on numbers—about $451 million; $451—I did better than I thought I would with the number.

The amount we estimate that is being spent under title XX for the aging, although I don't have exact figures, is $580 million. In the past—the Commissioner might know about it, but institutionally his ability first of all, to know what was going on when the State plans come in for title XX was, not institutionally there. We have placed him institutionally in the position of seeing the State plan through his delegee when it comes into the regional office, and commenting if he chooses, or raising any questions he wishes to.

The CHAIRMAN. Perhaps that is what we were concerned about, we just wanted to be sure there was no impairment of the function of the Commissioner with respect to serving the elderly and with respect to meaningful things that he is supposed to do.

By the way, just as an aside, there have been reports concerning some 1,300 people, who are supposed to have lost their lives by the heat, and I believe that the majority of them are elderly people. I was wondering if you or Dr. Benedict could alert the nutrition people who deliver meals to the home and therefore get access to the elderly people who don't come out, to report on any people who seem to need help and bring their need to the attention of the appropriate authorities?

Secretary HARRIS. I think some of that has already been done.

Mr. BENEDICT. We have already contacted our formal aging network. I agree with the suggestion that we look for ways to reach out more broadly to national organizations to help us in this crisis. It is advice that we have followed and will continue to follow.

The CHAIRMAN. Now, one of the subjects that we did have grave concern about, and still do, Madam Secretary, is the proliferation of the various Federal services in respect to the elderly. I have seen the figure, I don't know whether it is correct or not, that there are 134 different Federal programs that are designed to help the elderly. I was out in San Franciso this past week, and made a videotape on the Over Easy program with Mr. Hugh Downs and Mr. Frank Blair. There was an audience there—a number of people were there to supplement the program and ask questions.

One of the questions asked on that program by some of the people who were there, was how can I find in my community the services that are available to the elderly?

I said, well, I have generally thought that the Area Agency on Aging was supposed to be the correlating agency, but I know I have sat myself at my desk in Miami and taken 15 minutes to all different places to find out what services were available and where they could be obtained by the people.

I believe that one of the crying needs of a reorganization involves planning to see if you can create in every community, someone or some office, who can be a correlating agency or coordinating agency for the various Federal programs. This, at least, would make someone available to give information.

I told that lady who asked the question the other day, I said look in your telephone directory and call up the Area Agency on the

Aging, they should be able to give you assistance. I am advised however, that in many instances they have a staff of only three or four people on the average. What would you say to that?

Secretary HARRIS. Let me say that reorganization has as its base a similar concern. As I said before, the Commissioner on the Aging had no institutional way of knowing what was being funded for the aging by States under title XX funding. So we at least will get a better sense in one programmatic unit of what is being done, including the degree to which we have informing services.

As you know, there are some places that have very good networks of information. Some of it funded by title XX, some of it funded under the Older Americans Act. We are ourselves at Health and Human Services, under a kind of broken record approach taken by me looking at our own programs, first to be sure we have got them in one place, and then looking at the kinds of mechanisms we need to establish to get this coordinated function.

As you no doubt know, we have something called channeling demonstration, which I don't like as a term—that will be looking at this coordinated potential with respect to one area of aging need, long-term care and we share your concern and we are at the beginning stages.

First of all, we are finding out what is there, and second, we are finding the mechanism that we can recommend for this kind of information and coordinating function.

The CHAIRMAN. Well, you may remember that during World War II, President Roosevelt created in each State a man designated as the CDA, I believe it was NEA. There was one man appointed by the President, that had authority to coordinate the Federal programs in that State to advance the cause of the war, and I have often thought of that person. Maybe, we would be in a better position if we had at least one agency in every major center that could coordinate or mobilize, and if there was an inadequacy of the services being rendered, could report back to you or to Dr. Benedict. But I do hope you will project as much as you can the cause of the organization.

The Age Discrimination Act of 1975 forbade discrimination. Apparently we have not done very much since its enactment, and I understand that we have done nothing to prevent the States from discriminating on account of age in the rendition of services and programs. Whereas we have felt that the Federal law should prevail, and the States, perhaps by regulation, should not be permitted to discriminate in the provision of services to the people on account of age.

Have you any comment to make on this?

Secretary HARRIS. We found this, like all of the discrimination areas, one which about whose enforcement we cannot be comfortable. I would say that there is one area in which I feel we still have a great deal to do. It is in the area of discrimination on the basis of age, sex or race, and I must say that age is at least equal to the other two in being inadequately dealt with.

We have been concerned about this. We do have the problem of the relationship between the Federal Government and the State government in the enforcement of the requirement.

Mr. Benedict, would you like to comment on the problem that we have found?

Mr. BENEDICT. Congressman, as you know, the Age Discrimination Act is broad and diverse. The age factor applies not only to older people but to any instance of age discrimination. This gives the law very broad application.

The initial phases of implementation involved the HEW promulgation of governmentwide rules. Subsequently each agency develops its own specific rules to implement the AoA within its own jurisdiction and programs.

I share yours and the Secretary's concerns about the exemption of State laws. However, my feeling is that age discrimination is going to be a matter which is going to take us way beyond enforcement of this statute. It is going to be a major problem of public education. It will take a major effort in areas that relate to affirmative action, and we ought to see this statute as a begininng and not as only one tool.

The CHAIRMAN. As I understand it only the Department of State so far has issued regulations implementing the 1975 Act, the only department of Government, I am told, which has been approved.

Mr. BENEDICT. You are right. The departments are moving very cautiously and carefully. They have a large task. We really did not come prepared to give you an agency-by-agency status report today. However, the Department will provide a report on the performance of our sister Federal agencies in compliance with the statute.

[The material subsequently received from Mr. Benedict follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
OFFICE OF THE SECRETARY,
Washington, D.C., August 20, 1980.

NOTE FOR THE SECRETARY

Subject: Regulations Implementing the Age Discrimination Act.

In November 1975, Congress enacted the Age Discrimination Act as part of the Amendments to the Older Americans Act (Public Law 94-135). The purpose of the Act was to prohibit unreasonable discrimination based on age in programs and activities receiving Federal financial assistance. In October 1978, Congress amended the Act (Public Law 95-478). The word "unreasonable" was struck from the purpose of the Act, so that now the purpose of the Act is to prohibit discrimination based on age in programs and activities receiving Federal financial assistance. There is allowance for exceptions to the requirements of the Act. Although this Act was passed as a result of Congressional concern for the problems of the elderly in particular, the Act applies to persons of all ages.

The Act's prohibition against age discrimination was to become effective only after the issuance of the general, government-wide regulations. The statute designated HEW as the lead agency. The Office for Civil Rights has enforcement responsibility following HHS publication of general regulations and approval of Federal agency regulations. We published the final general regulations on June 12, 1979, and these regulations became effective on July 1, 1979. Each agency which provides Federal financial assistance is to issue proposed and then final, specific regulations based on the Department's final, general regulations. Attached is a status report on the issuance of agency regulations.

HHS' final, general regulations include a self-evaluation requirement for each agency. It mandates that recipients complete a written self-evaluation of its compliance with the Act, listing the age distinctions used and the justifications for these distinctions. On February 14, 1980, the Office of Management and Budget (OMB) disppproved this self-evaluation requirement after the general regulations were published. OMB felt that this requirement would be too burdensome on the recipients since there are no clear distinctions of age discrimination. Based on the negotiations between OMB and the Department, a revised self-evaluation is being prepared that will only require the recipients to list only those age distinctions imposed in addi-

tion to the Federal age distinctions, and eliminates the justification requirement. The revised self-evaluation is expected to be sent to OMB very soon. Until the revised self-evaluation requirement is approved, none of the Federal agency regulations will receive final approval. The State Department, without approval of our Department, however, published final regulations.

WILLIAM A. BLAKEY,
Deputy Assistant Secretary
for Legislation (Human Services).

Attachment.

STATUS REPORT OF AGENCY REGULATIONS IMPLEMENTING THE AGE DISCRIMINATION ACT OF 1975

Agency	*Action taken*
Action Agency	Draft Notice of Proposed Rulemaking (NPRM) received on May 22, 1980.
Agriculture Department	Draft NPRM received on Aug. 11, 1980.
Civil Aeronautics Board	NPRM published Sept. 26, 1979.
Commerce Department	NPRM published July 10, 1980.
Community Services Administration	NPRM published Oct. 22, 1979.
Defense Department	No action.
Education Department	No action.
Energy Department	No action.
Environmental Protection Agency	No action.
Equal Employment Opportunity Commission.	NPRM published Oct. 17, 1979.
Federal Home Loan Bank Board	No action.
General Services Administration	No action.
Health and Human Services	NPRM published on Sept. 24, 1979. Draft final regulations are being prepared.
Housing and Urban Development	No action.
Interior Department	NPRM published Jan. 3, 1980. Final regulations submitted Mar. 3, 1980 for Health and Human Services' (HHS) approval.
Justice Department	NPRM published May 19, 1980.
Labor Department	No action.
National Aeronautics and Space Administration.	NPRM published June 17, 1980.
National Endowment for the Arts	NPRM published Oct. 2, 1979. Final regulations submitted Jan. 27, 1980 for HHS' approval.
National Endowment for Humanities	NPRM published Oct. 4, 1979.
National Science Foundation	NPRM published Oct. 4, 1979. Final regulations submitted Dec. 4, 1979 for HHS' approval.
Nuclear Regulatory Commission	Draft NPRM received on Aug. 23, 1980.
Office of Personnel Management	No action.
Small Business Administration	NPRM published Oct. 17, 1979. Final Regulations submitted April 23, 1980 for HHS' approval.
State Department (published regulations jointly with the Agency for International Development and the International Communication Commission).	Final regulations published on May 14, 1980 without HHS' approval.
Tennessee Valley Authority	NPRM published Feb. 2, 1980.
Transportation Department	NPRM published Oct. 22, 1979.
Treasury Department	NPRM published Dec. 31, 1979. Draft final regulations received on August 28, 1980.
Veterans Administration	No act.

The CHAIRMAN. Madam Secretary, two other questions.

One, you have made reference to long-term care. Only this morning at the insistence of a very earnest young grandson of a friend of mine, as a matter of fact, he works for me in my office, I called a high religious official in Miami and asked him to intervene with a

very excellent care nursing home maintained by that faith, asking them to continue care for the grandfather of this young man.

They said that he could no longer be rehabilitated; there was no hope for his rehabilitation and they wanted him to go into the nursing home.

The family didn't have the money to put him in the nursing home because that cost a lot of money and they wanted him to stay on in that very excellent home.

Well, that reminds me of a case that has come so often to my attention of where people just need a decent place to stay for reasonable minimum care, and yet I am chairman of this Committee on Aging's Health and Long-Term Care Subcommittee, and that is one of the greatest enigmas we have had to face, aside from the medical services custodial care for those people who need just that.

I realize that it gets over into another department, but have you any comment to make on that question?

Secretary HARRIS. Only to say that very soon after I arrived at Health and Human Services, and its predecessor agency, it became clear that this is the cutting edge of the future need. The Under Secretary, since the first of the year, with a significant part of the top leadership of the Department, has been looking at the issue you raised and related issues.

There are some people who are now in skilled nursing facilities who might very well, with a different policy, be able to stay in their own homes without even that level of care. It is complex.

It is from a funding point of view extraordinarily difficult at this time, because anything we add in the way of entitlement programs comes under scrutiny about the ultimate costs, so we are moving with great concern, with an understanding of the complexity of the area we are dealing with and the wide range of need.

You have given part of that wide range. It is our hope, I do not say our expectation, although the Under Secretary would say it is his expectation, that by fall we may have some recommendations which we can share.

I think it is so complex I cannot promise you when we will complete the process in which we have been engaged all this year.

The CHAIRMAN. We will eagerly look forward to that. I am glad you mentioned the matter of expense. I don't know whether an idea that I have been trying to develop is correct or not, but I have been trying to devise an amendment to the medicare bill authorizing that medicare be extended to cover cases where home care or other desirable care could be rendered to a medicare covered person which would not cost more than the average cost per year extended by medicare.

In other words, with respect to home care, we think in general, except in cases that are serious, that home care would be better for the parent and would be cheaper for the Government.

Now, acknowledging the budget problems that you mentioned, would you look with favor on the possibility of Congress amending the law to give your Department discretion, as long as they don't spend more money than they would spend under existing law, to adopt a reasonable alternative to the ordinary care that would be provided under the medicare program?

Secretary HARRIS. That is one of the questions being addressed, sir, by the long-term care task force at the Department. As I have said, this is very complex. What seems to be a cost-saver may not be, because one increases the universe of potential users. This is not a negative for me as long as I know what it is we are doing when we move into new funding.

I would urge against the particularized expansion of departmental authority at this time and would hope that you would await the results of our analysis of what the demand would be, what the cost would be with repect to this aspect of long-term care.

As I said, we are looking at the full range of options for long-term care, and that obviously would have to include the possibility of aides to people in their homes.

I cannot tell you what my policy judgment will be when all of the consequences of various policy options are before me and before this committee, and this is exactly what the Under Secretary and his task force are now looking at.

The CHAIRMAN. The last question, I know you are very much concerned about the elderly people and all the people being able to get decent health care.

I think one of the grave if not shameful deficiencies of our country is there are so many people who I feel are not getting the health care that they should receive.

With all the blessings of medicare to millions of people, we are told that medicare pays only 40 percent of the medical costs incurred by elderly people.

We are grateful for your kind cooperation with respect to the Health Care Financing Administration which we think will help a little in a given area. However, with all the problems that we now have and all the aid that we are now giving there are still a great many people who don't get the care that they need.

The costs will continue to jump and there will be high medical costs and bills. Doctors won't take the assignments and patients will be left with hospital and doctor bills which the Government will later find to be unreasonable.

Down home we have thousands of people who are covered, as you know, by clinical programs. It is a carryover from what used to be in pre-Castro Cuba, where they pay so much a month and they have medical benefits provided from each program.

One of the men who sponsor one of those programs believes that by allowing a clinic to charge $15 a month to its members, the clinic could be in a position to provide comprehensive medical care, including all deductibles.

It had already been approved by the State insurance department when I took it up with Mr. Snyder who used to be in that department.

I was thinking, that this idea of HMO's provide a way to allow people to pay a few dollars a month and get comprehensive care until we can develop the kind of a universal system toward which we are working.

Do you have any comment to make?

Secretary HARRIS. As you know, the Department is supporting and promoting the development of health maintenance organizations. We are in the process of looking at some demonstrations to

see whether or not we can in local communities devise institutional ways of serving the poor who are not now covered by medicaid or medicare and we are, as I said, through the use of HMOs, through some demonstration projects, looking at what the problems would be if we were to fund health care is, a different way, looking at that question.

The President's national health plan would cover a number of those gaps, and I would urge upon the Congress the prompt adoption of the President's health plan which is a necessary first step.

The CHAIRMAN. When it gets down to only one more vote it will pass, because I am for it.

Father Drinan?

Mr. DRINAN. Thank you very much.

I am sorry I couldn't be here earlier and the others couldn't be here because of business on the floor.

I was really surprised at the statistics that you have here, that about 18 percent of our older people cannot carry on normal activities of daily living, and then you suggest very properly that the Older Americans Act was designed to help us adjust to that.

Do you feel that the formula of the Older Americans Act should be looked at again? Is it adequate for the old people, those that are 85 and increasing in number? I wonder if you think that this committee or another committee of the Congress should begin to reexamine the basic formula of the Older Americans Act.

Secretary HARRIS. Not now, Father Drinan.

I say frequently over across the street that there is nothing more damaging to a plant than constantly to pull it up to see how the roots are doing.

This is a very new set of amendments. They will be fully operational in October, and I think we should look at its operation, not our theory of its operation. That is why we have said we will be proposing only a simple reauthorization until such time as we have some real live experience with the functioning of the Older Americans Act.

Mr. DRINAN. Would you elaborate just a bit more on what you say on page 7, "Full implementation of the 1978 amendments by the States will not be completed until October of this year."

Would you suggest what those changes might be?

Secretary HARRIS. I cannot do that yet. Our recommendations ought to be based on real life experiences and not on theory. When we have made mistakes in programs to meet human needs it is because we have not looked at the end result, the delivery point, to see what the problems are there, and I think we need 1 year or maybe 2 operating those new amendments in the context of our cross-cutting analysis of the act and title XX to see what we need to do together, what we should recommend as an administration to you to do and our own judgment of whether we are right or wrong.

Mr. DRINAN. I commend you upon your statement which I read earlier today. I thank you for coming and all that you continue to do.

I yield back the balance of my time.

The CHAIRMAN. Thank you very much.

I will ask Mr. Biaggi, my cochairman, does he have anything else to say, and then we will send you home with our best wishes and our gratitude.

Mr. BIAGGI. We have a number of questions which we will submit.

[The questions and answers follow:]

WRITTEN QUESTIONS SUBMITTED BY THE COMMITTEE ALONG WITH ANSWERS SUBSEQUENTLY RECEIVED FROM SECRETARY HARRIS

Question. In your testimony, you state "we are considering a simple extension of all expenditure authorities which will expire at the end of fiscal year 1981." Would the extention be for one year or two? Would there be a request to increase funding for any of the programs in the Act?

Answer. The Administration is requesting a simple two-year extension of the Older Americans Act in a bill I transmitted to the Congress on August 19. Funding decisions will be transmitted to the Congress in the President's fiscal year 1982 budget, together with any appropriate minor or technical amendments.

Question. What is your overall assessment of the various levels of the so-called aging network? Is there adequate coordination between levels? Do you foresee any changes in responsibilities under the terms of reauthorization?

Answer. Information available to the Department of Health and Human Services (HHS) indicates that network operations are working well. Coordination between levels of the network has been strengthened as area agencies have assumed responsibility for all services (nutrition and social services) within their respective jurisdictions. Improvements in the state and area planning processes have also improved coordination and have encouraged more effective state and area agency cooperation. State and area agencies are not yet at a consistent level of expertise and ability across the country. However, we will continue to work through our Regional Offices to build that capacity in order to have responsive agencies at the state and local levels.

Moreover, the Department does not expect that the reauthorized legislation will alter the responsibilities now assigned under the Older Americans Act to the various network components.

Question. A number of the members of this Committee testified in support of a $280 million appropriation level for the Title III-B program as proposed by the President in his first budget. His revised budget resolution request of $247 million is only $100,000 more than last year. Under the 1978 amendments, Title III-B is to absorb the supportive services, such as transportation, which were formerly under the Title III-C (Nutrition Program). How can Title III-B assume these responsibilities with such a small increase in funds?

Answer. Fifty million dollars was allocated by the Congress in 1980 to absorb the social services funded in the Nutrition budget. If it all had been used for this purpose, all but a few million dollars would have been absorbed. However, the absorption process will not be completed by the end of fiscal year 1980. Therefore, it will be necessary for certain states to effect cost efficiencies in social services in order to sustain current service levels. This was among the very difficult budget choices that had to be faced.

Question. In your testimony, you indicate that half of the 40 new positions being provided to the Administration on Aging will go to "enable the Administration on Aging to strengthen the long term care unit." How will this be done? Is the Administration on Aging assuming a lead role in the development of a long-term care policy?

Answer. The new long-term care unit in the Administration on Aging (AoA) will have a complement of 13-15 persons. Some of the positions are the result of the reorganization. The Departmental Task Force on Long-Term Care, which includes AoA, will coordinate all of the Department's efforts in developing a long-term care policy.

Question. In your testimony, you indicate that the current Older Americans Act was designed "at taken in part to the demographic shifts that have taken place in American society over the past decades." Later, you refer to the phenomenal growth of the 85 and over population. Is it your opinion that the Older Americans Act of the future will have to be more targeted for the so called "old old" segments of the elderly population? Is the Older Americans Act a proper vehicle upon which a national policy for the so-called "frail" elderly can be developed?

Answer. The question of targeting is being examined as we prepare the Department's budget for fiscal year 1982. Clearly, those in the "old old" category have a

variety of unique needs which may require special allocation of resources. We will continue to grapple with this question as the budget process goes forward.

Concerning the role of the Older Americans Act, several points should be noted:

The Act is a very flexible legislative instrument. Its support for "comprehensive and coordinated service systems" for the elderly provides a firm statutory base for addressing the whole range of needs and problems which confront the elderly.

Programs authorized under the Older Americans Act now provide services directly related to the needs of the frail elderly. Home delivered meals authorized under Title III, Part C, and a variety of home and access services authorized under Title III, Part B, are examples of the benefits wich the Act offers to the "old old." Services to those in institutions also authorized under Title III, Part B, provide direct benefits to the old old as well.

In conjunction with Titles XVIII, XIX, and XX of the Social Security Act the Older Americans Act plays a critical role in the Department's policy considerations in long term care.

I expect that the work of the Departmental Task Force on Long-Term Care, and the knowledge we gain from the long term care demonstrations jointly developed by the Administration on Aging (AoA), the office of the Assistant Secretary for Planning and Evaluation (ASPE), and the Health Care Financing Administration (HCFA) will contribute significantly to a national policy on care for the frail and disabled elderly.

Question. Title IV of the Older Americans Act, which provides funding for research and training activities, is being reduced for fiscal year 1981. Is this indicative of any dissatisfaction on your part with those activities conducted in the areas of research and training?

Answer. No. We had a series of very difficult choices to make in developing both the original fiscal year 1981 budget and the President's revised budget. Throughout that process, we were guided by a commitment to maintaining levels of services provided under Title III, Part B (Social Services) and Part C (Nutrition) and to expanding those services where possible. This commitment to sustaining the direct services provided to older persons made it mandatory for us to look to the AoA discretionary programs when we made our adjustments in the 1981 budget. Hence, funds for research and training were reduced, not because we have accomplished all that we could or need to with these programs, but because of our determination to maintain service levels under Title III.

Question. The 1978 Amendments to the Older Americans Act merged the former Title V, Multipurpose Senior Center Program under Title III-B, the Social Service authorization. What is your assessment of the Multipurpose Senior Center Program now and in the future? Should it be restored as a separate title?

Answer. I believe that senior centers are an important means of providing services to older americans and can become the visible focal point for information about all available services for the elderly, whether financed by State, local, Federal, or private agencies. Now area agencies decide what levels of funding should be provided for senior centers in their localities. We believe they are best able to make the decision, and therefore, funds should not be segregated.

Question. On page 7 of your testimony, you indicate that a "timely and effective beginning" was made toward meeting the provisions of the 1978 amendments. However, it took a year and a half to develop the final regulations concerning these provisions. Rather than being "timely," wouldn't you agree that 18 months is an inordinate amount of time for the publication of regulations and that this delay resulted in some program disruptions on the State and local levels?

Answer. We believe that the Department productively used the time (October 1978–March 1980) devoted to developing the Title III and Title VI regulations. During that period we were able to draw on the insights and recommendations of literally hundreds of individuals and organizations (public and private) in:

Formulating the draft regulations;

Reviewing and assessing the draft material; and

Making decisions about the final rules for Title III.

The quality which characterizes the final product directly reflects both the input and consultations we received and the thorough deliberations that marked the regulations development process. In addition, the work on the Title III regulations provided a solid foundation for the development of the Title VI regulations.

We recognize, of course, that the State and Area Agencies would need continued guidance from AoA about the conduct of program operations during the period in which the Titles III and VI regulations were under development. AoA provided assistance in the form of program instructions, State plan guidance, guidance for prospective Title VI applicants, and so forth. This on-going assistance enabled States and communities to comply with those provisions of the 1978 Amendments which

required immediate adherence, to seek waivers for other provisions, and to continue with State and area planning. Indian tribes were helped in getting ready to apply for funding under Title VI. We know of no serious "disruption at the State and local levels" during the period while the regulations were being developed.

Question. On page 6 of your statement, you state that under the 1978 Older Americans Act Amendments, "advocacy responsibilities of the Administration on Aging and the State and area agencies on aging were explicitly delineated." Could you elaborate both in terms of your definition of advocacy and delineation?

Answer. The Older Americans Act states that it is the duty and function of the Administration on Aging to serve as the effective and visible advocate for the elderly within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities over all Federal policies affecting the elderly. In addition, HHS believes that AoA's advocacy mission requires an aggressive program of interagency activities and initiatives which focuses resources from other organizations in this Department, and elsewhere in the government, on the needs of older persons.

State and area agencies on aging are also required under the Older Americans Act to pursue vigorous advocacy programs through review and comment efforts parallel to those assigned to AoA.

In short, advocacy is an on-going effort to utilize the full potential of all programs in different organizations and at various governmental levels offered by way of services and benefits to older people. If successful, advocacy assures that programs which can help the elderly actually do so in a timely, consistent and effective manner.

Question. Do you see a relationship between the Nursing Home Ombudsman Program under the Older Americans Act and the recent regulations you proposed on improved rights for nursing home patients?

Answer. The proposed regulations on patients' rights are designed to take advantage of the existing capacities which the Ombudsman Program offers and to expand and strengthen those capacities.

HCFA and AoA collaborated both in the development of proposed conditions of participation for skilled and intermediate care nursing home facilities participating in Medicaid and Medicare and in the development of guidance for the Nursing Home Ombudsman Program. The draft HCFA rules of participation make adherence to the patients' rights by nursing homes a condition for receiving Federal funds. These draft rules also assure the state ombudsman access to patients in nursing homes. This important provision supports one of the statutory objectives of the ombudsman program.

Question. In your statement, you contend "The Commissioner on Aging, under the new structure, will provide leadership for all programs addressing the needs of the elderly funded through Title XX." What do you mean by leadership? Will this result in a greater portion of Title XX funds being earmarked for senior services?

Answer. Under the new structure, the Commissioner on Aging will provide leadership by establishing common definitions of services, working toward the elimination of duplication in reporting requirements and accounting procedures, and assisting State Title XX agencies in improving the quality of programs for the elderly. There is no way that we can assure that a greater proportion of Title XX funds will be earmarked for senior services.

Question. Again, regarding the 40 new positions scheduled for the Administration on Aging under the reorganization, you speak about 20 positions going for the long term care initiatives and the balance to research and program development units. Are these the only areas where there are needs for new staff? Have these staff been involved previously in the aging field?

Answer. Of the 40 positions, 20 will go to the regions and 20 to the headquarters staff. Some of the headquarters staff will be assigned to the long term care initiative.

The remainder of the headquarters positions will be divided among research, program development, program operations and education and training. These are the areas the Commissioner has determined will benefit most, at this time, from the additional staff positions. All of the individuals assigned to AoA under the reorganization have training and experience in planning and managing human services. A number have worked directly with programs serving the elderly. The Commissioner will ultimately decide how best to use these additional resources.

Question. On page 13, you state "since the reorganization was announced, we have taken a number of implementing steps. Office of Human Development Staff have drafted revised functional statements." I understand this includes the functional statement of the Administration on Aging. Wasn't the past policy to have the

Administration on Aging write its own functional statement? Why the change? Isn't this another example of weakened Administration on Aging powers under the reorganization? When will these functional statements be completed?

Answer. It has always been general practice (as opposed to a formal "policy") in the Department, and still is, for the operating unit to draft its own functional statement and then for that draft to go through a review process at higher organization levels to assure its consistency with overall departmental and agency organization. The phrase "Human Development Staff" was used in a generic sense and includes any staff located within the Office of Human Development Services. In fact, the process has been functioning just as it always has in the past: Administration on Aging personnel draft the statement; staff in the office of the Assistant Secretary for Human Development Services review and make suggestions, and each successive revision is made by mutual discussion and agreement among all affected parties. There has been no change and no weakening of the Administration on Aging's responsibilities. Some of the new functional statements are almost ready for publication in the Federal Register; others, including the one for the Administration on Aging, are taking longer.

Question. Under the reorgnization plan, the Title XX program will take a more prominent role. Title XX is a more integrated block grant type of program while the Older Americans Act is a categorical program. Is it the intention of the reorganization to have Title XX be more categorical, or the Older Americans Act be more integrated?

Answer. No. We are not trying to make either program resemble the other. We would like to see the two programs coordinated more effectively so that the Administration on Aging will have a larger role and influence on Title XX policies and program plans as they affect the elderly population. Under the reorganization, States will still, choose how to allocate their Title XX dollars. Older Americans Act funds will still be spent exclusively on programs to benefit the aged. We would hope the State Agencies on Aging would have more impact on the way in which those programs for the elderly funded under Title XX are managed—consistent, of course, with State decisionmaking processes. There is no reason to anticipate that the Title XX program would play a "more prominent role" in overshadowing or limiting the authority of the Administration on Aging under the Older Americans Act. The reorganization does not change the fundamental authorities of either Title XX or the Older Americans Act.

Question. Under the reorganization, who will have the final authority to sign off on State plans developed for funding under the Old Americans Act?

Answer. The Commissioner on Aging or his/her designee continues to have the final authority to approve State plans.

Question. Under the reorganization plan, who will conduct the performance appraisal of the Administration on Aging Regional Directors? Does this constitute a change from past policies?

Answer. There has been no change in past policies or practices. The AoA Associate Commissioner for Program Operations, jointly with the Regional Program Directors, conducts the performance appraisal. The AoA Commissioner reviews and initials these performance appraisals.

Question. Under the reorganization, it is the Committee's understanding that approximately 13 Administration on Aging regional positions, mostly financial management positions, were to be transferred to the Office of Human Development Services regional staff. These positions were to have been replaced at the time of transfer, yet it is our understanding that only the first phase of this process has taken place. When will the replacement personnel be provided?

Answer. The position ceilings for both the Administration on Aging regional offices and the affected Office of Human Development Services regional staff unit have already been adjusted to make this exchange. The regional aging units had positions added back to their ceilings to replace the numbers subtracted for financial management all in one transfer, as promised. Because financial management is a more clearly identifiable skill, it has been somewhat easier to identify the actual individuals to be moved along with the positions into the Human Development Services staff, than has been the cases for those to be moved the other way. However, the aging program has not lost the services of those financial management staff members, as they are continuing to provide support for the same aging programs as they were before. Also, the process of identifying the actual persons to be transferred back into the aging regional units is being pursued vigorously. Steps must be taken to assure legitimate protections to the affected employees and preclude any possibility that any of them might be transferred into situations which could result in down-gradings, in loss of status, or in their being assigned to positions calling for skills which are inconsistent with their training and experience.

Rather than move one person at a time as they are identified, we have preferred to staff out the entire transfer of all the people to be so moved on a planning basis. In this way we can be sure there are no hidden adverse effects that might result from an incremental approach. The planning phase is now close to completion. When it is finished, the movement of all the affected people can take place within a few days.

Question. You state that under the reorganization plan, "The Commissioner's control of the quality, type and delivery of services will be significantly increased." What would be the mechanism through which other program administrators could solicit advice and expertise on elderly issues from the Administration on Aging?

Answer. The restructuring makes several significant changes, which separately and cumulatively, will improve the execution of our responsibilities under the Act. The first of these changes is that 40 staff are added to the AoA complement. Those increases will alleviate some of the chronic AoA understaffing and will strengthen Central Office staff in the critically needed areas of research and training, long term care, and field management. The Regional Office staff increases will strengthen AoA's current effort to improve the assessment of local service delivery and put the Regional Offices in a better position to work with State agencies to remedy deficiencies.

A second change relates to Title XX. AoA will now be intrinsically involved in the administration and direction of the Title XX program as it pertains to the elderly. That involvement will mean that AoA will review the State Comprehensive Services Plans, participate in the development of guidance, influence the evolution of standards, and cooperate in the training of personnel. In view of the importance of the Title XX program, this involvement constitutes a major step for the focal point aspects of the AoA mission.

A third change is that within the Office of Human Development Services, AoA is now given overall responsibility for the elderly. No-longer will Title XX staff and AoA staff labor at similar tasks. Instead, program development in homemaker services for the elderly, for example, will be an exclusive AoA responsibility.

Question. A major reason for the reorganization of the Office of Human Development Services concerns the failure of the Administration on Public Services to improve the coordination and State management of the social services under Title XX. Certain functions formerly the responsibility of the Administration on Public Services will be handed to the remaining four administrations. Influence that Title XX programs may have over the aging programs in the new arrangement. Please comment.

Answer. The primary functions in a categorical program such as the Older Americans Act which people are typically concerned about when they mention "influence" are the policy and quality assurance functions. Categorical program advocates do not want such functions "influenced" from non-categorical sources. Conversely, those are precisely the functions in which we anticipate the reorganization will give the categorical program more influence with respect to Title XX. I recognize that Title XX is the larger program from a dollar point of view and that conventional wisdom holds that it will therefore result in the tail wagging the dog. The reason we do not expect that to happen is that we are precluded by Title XX from exercising the kind of policy and quality control over the Title XX program that the categorical programs are accustomed to. Therefore, there is no body of Title XX regulations which would threaten the supplant or somehow influence the Older Americans Act regulations. Whatever opportunities there are for influence should be the other way.

This reorganization puts the Older Americans Act program in a better position than it was previously to influence the quality of services provided to the elderly under Title XX.

Question. The Human Development Services staff has drafted revised functional statements containing the new responsibilities of each office. Could you please provide us with copies of these statements?

Answer. As I indicated in answer to question 6, only a portion of the total has reached the stage of being ready for publication. Copies of this portion will be forwarded as soon as they have received the final internal clearance, and prior to their publication in the Federal Register. The balance, including the one for the Administration on Aging, will be forwarded when they have reached the same stage.

Question. What is the role of the new Office of Program Coordination and Review? (a) what kind of impact do you expect this office to have in the various state aging plans?

Answer. The Office of Program Coordination and Review maintains responsibility for State's administration requirements under Title XX and will facilitate program

office review of the Title XX program plans. Regional Fiscal Operations will also be housed in this office.

The responsibility for developing state aging plans will continue to be with the state aging agencies. OPCR will maintain a systematic and ongoing review of plans and services with the OHDS program administration to identify gaps in services, avoid the duplication of program efforts, and assist in the more efficient interaction of service delivery efforts and strategies. To the extent that these efforts improve the effectiveness of all OHDS programs, state aging plans would also benefit.

Question. What is the role envisioned by Health and Human Services of the aging network in long-term care? Specifically, based upon the "channeling" applications received, what role has been proposed for the aging network?

Answer. The role of AoA and its network of state and local aging agencies in providing continuum of care for the vulnerable elderly is one of the major purposes of Older Americans Act programs on aging (see Section 301(a)(3)). The Act also requires the state agency to initiate long-term care (LTC) services and programs (Sections 307(a)(12)(A); and 307(a)(16)). More broadly, the Commissioner is empowered to make special grants to support the development of comprehensive, coordinated systems of community long-term care for older individuals (Section 422).

The National Long-Term Care Channeling Demonstration requires participating states to assemble a LTC planning committee consisting of at least the Title XIX (Medical Assistance) agency, the Title XX (Social Services) agency, and the state unit on aging, along with whatever other departments or agencies any individual Governor may designate. Each Governor was given the option to identify a lead agency in state government to be responsible for preparing that state's Long Term Care Demonstration site proposal or system development grant application. In about half of the states submitting demonstration proposals, the state unit on aging is the lead agency; in another seven states at least one or more of the proposed sites would have the area agency on aging assume the lead in implementing channeling locally.

About half of the states applying for LTC system development grants had already submitted channeling demonstration site proposals; so there is some overlap in these numbers. But again, nearly half of the states identified their unit on aging as the lead agency for system development at the state level. And these figures do not include states in which an umbrella human services department is identified as lead agency, but whose application specifies that within the larger department the state unit on aging is in fact chiefly responsible.

Question. Under the present Title XX reporting system, most information about clients is available only according to eligibility groupings such as categorical relatedness (AFDC, SSI, Medicaid) or family income. Consequently, very little is known about other characteristics of the Title XX population, such as age. Are there any plans to develop a better system to determine how many older Americans are receiving services under Title XX?

Answer. HDS has developed a broad strategy to improve program reporting, especially cross-program reporting linkages between Title XX, Aging, and Child Welfare. With respect to Aging, HDS's Office of Management Services (OMS) is working closely with both AoA (Administration on Aging) and NASUA (National Association of State Units on Aging).

As part of this strategy, HDS has provided funds to three states in fiscal year 1980 to improve their own human services management information systems in accordance with HDS guidelines that include:

Specific data elements that include client demographics for Title XX, Aging, and Child Welfare recipients.

Required program systems interfaces that include linkages between Title XX systems and Aging systems.

Required functional interfaces between client systems and fiscal systems.

In addition, each State will supply HDS with detailed demographic information about clients (with client identity removed) which will enable HDS to provide aggregate statistics, including age characteristics, for any of the covered program areas.

In fiscal year 1981 through fiscal year 1985, HDS will provide financial incentives to all remaining States to improve their systems and to provide more detailed data to HDS. By the end of fiscal year 1982, HDS plans to have provided funds to enough States to be receiving quality data from States that are statistically representative of the nation as a whole.

Mr. BIAGGI. Given the problems of the elderly, and their growing numbers, we are concerned with the proper authority and proper cooperation at the highest level.

Originally, I had introduced a resolution that would have created an Office of Assistant Secretary in order to make certain that the person who is designated to represent the Administration on Aging would have access to the Commissioner.

Secretary HARRIS. You mean to the Secretary?

Mr. BIAGGI. Yes, Secretary. Mr. Califano, who was then Secretary of HEW, prevailed upon us however, not to pursue this route and promised accessibility. Your response to Mr. Roybal's question was obviously that accessibility is there.

The committee's concern is very deep, and we are ever mindful of it individually. Given the increasing numbers of elderly, you can understand why we are fearful of allowing this request to become submerged.

A couple of quick questions: You made a statement that under the new structure, the Commission on Aging would provide leadership. Insofar as the title XX is concerned, what will this new leadership mean, that the elderly would be given more money?

Secretary HARRIS. It does not follow from the reorganization. The determination of the allocation of title XX funds is made by the States.

Now, it may be as we deal with the States with respect to their allocations with respect to the aging that the persuasiveness of the leadership of the Commissioner might lead to different funding patterns, but on that issue he will be out there with the Commissioner on children, youth and families, which also is or has a responsibility for program monitoring of title XX funds in the area of children, youth and families.

It is quality that we are primarily concerned about in programs in which the initiative is given to the States. The qualitative decision clearly must be made under the law by the States.

The quality question is one that I think, as the Federal Government, we ought to give leadership to, to be sure that there is the maximum qualitative consequence from the allocation of whatever portion of the funds go to the aging, so the short answer is that in terms of the reorganization, the proportion of funds going to the aging is not addressed at all, could not be under the title XX legislation.

We hope we will have a significant qualitative impact where that would be useful.

Mr. BIAGGI. Wouldn't you think half of the 40 positions going to the Administration on Aging would go toward enabling the to enable the administration to strengthen the long-term care?

Secretary HARRIS. In the context of my statement, if I remember correctly, it said long-term care unit and other areas, including research. It does not stop with long care, the long-term care unit.

We would anticipate six to eight of those persons going into the long-term care unit where we have placed a good deal of responsibility as we move with the task force and move with the so-called channeling experiments on long-term care.

That is about the level of increase, but eight, given the number of people, that is significant.

Mr. BIAGGI. How many of those will be service-oriented people?

Secretary HARRIS. I don't know how you have those allocated right now.

Mr. BENEDICT. I am not sure if I know what you mean by service-oriented people. The whole unit will ultimately be about 15 people this year. Their primary objective as a staff unit will be to assist States which receive the channeling agency awards.

Those States will have a major job on their hands in pulling together multiple resources and in helping local communities to set up new and different kinds of long-term care entities. That is where the energies of the AoA long-term care staff will go, to make those experiments work.

Mr. BIAGGI. Do those people have prior experience in the field?

Secretary HARRIS. Well, I think they will be chosen on the basis of their ability to perform the task. I don't know whether you have identified the exact people you are putting there yet.

Mr. BIAGGI. That is not exactly responsive to the question.

Secretary HARRIS. If he has not identified the people, I cannot tell you whether they have had experience, direct experience in doing specifically what they will be asked to do here. It is a unique problem, but it is clear that they will be people who have both the training and the background to achieve the goals that are set.

We would not knowingly think of putting into any part of the Department people who could not perform the task, and that is why I say there is probably nobody who has done the channeling demonstration as we are doing it because it has not been done before.

Mr. BIAGGI. Thank you.

The CHAIRMAN. Mr. Grassley?

I am glad you mentioned that channeling because I was very much impressed by hearing where they limit it to how the channeling process works.

Secretary HARRIS. I hate that term.

Mr. GRASSLEY. Mrs. Harris, going back to a point that the chairman brought up previously that I want to follow up on. In regard to your reorganization of O.H.D.S. and the statement in your prepared testimony which indicated you sought General Counsel's approval and saying you had the authority to move ahead with this reorganization. Consider the fact that we had a Congressional Research Service, a division memo, that says such a reorganization is in violation of Section 201 of the Older Americans Act; it states: "The Secretary shall not approve any delegation of function of the Commissioner to any other officer not directly responsible to the Commissioner."

I would like to ask you to comment in a general way on the General Counsel's statement to you. Was it oral or was it written and if it was written I would like to see it. Just why the delegation or the reorganization, where they are functions that were originally reporting to the Commissioner on Aging, do not now so report. Is this not a violation of section 201?

Secretary HARRIS. It is not, because they are administrative functions. As a matter of fact, if you wanted to take the prohibition to its logical conclusion—which, thank God in life we never do—one could say that since he is required to deal with the people who report to him, he ought to write their checks, and it is clear that he does not do that.

He never did that, but this is an administrative task which is performed for the Administration on the Aging by somebody other than the Commissioner, even though he has the responsibility for supervising and dealing with the people in his area.

It is because the areas that have been reorganized are cognate administrative areas that I am advised that under section 201 the prohibition against delegation of functions assigned to the Commissioner does not include administration and fiscal monitoring functions. That has been removed to the Office of Program Coordination and Review.

The opinion which did not come to me directly was in writing to the Assistant Secretary for Human Development Services and was part of the justification that he presented to me.

It is a position of the General Counsel's Office which was not unique to this request for a ruling on the legality, the propriety and acceptability of this reorganization, but has consistently been the assertion of the General Counsel's Office of the Department, first of Health, Education and Welfare, and now Health and Human Services.

If there is a contrary opinion it was never brought to my attention by this body or anybody else. I rely as a matter of course and propriety and law upon the opinions of the General Counsel's Office of the Department of Health and Human Services.

I will say that I have reviewed the opinions that have been rendered by the Office of General Counsel on this and cognate issues where the Congress has limited the delegability of the authority and am satisfied that the General Counsel has presented to me a judgment which is accurate on the facts and the law.

Mr. GRASSLEY. Well, I can appreciate that, and at this point I won't say any more than to just say for the record it was CRS conclusion that all delegation of authority from the Commissioner to officers who do not report directly to the Commissioner are foreclosed by statute, "whether or not those delegations include policymaking responsibilities."

Thank you, Mr. Chairman.

The CHAIRMAN. Do you have a question?

Mr. ROYBAL. I would like to receive from your Department, in a brief and concise manner, the answer to the following question:

How will this reorganization include the management of the Administration on Aging? Giving it to me in a brief and concise manner would help me tremendously in discussing the reorganization, and I am sure it will help every member of this committee.

Secretary HARRIS. I will be delighted to put it in writing. I have stated it here several times in what is at least familiar, brief and concise, which is to say that it increases the ability of the Commissioner on Aging to analyze the nature of and the quality of not only the Older Americans Act funding but also the title XX funding.

Mr. ROYBAL. Would you submit that in writing?

Secretary HARRIS. I will be delighted to repeat it and put it in writing for your use.

Mr. ROYBAL. Thank you.

[The information follows:]

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C., August 11, 1980.

Hon. EDWARD ROYBAL,
House of Representatives,
Washington, D.C.

DEAR MR. ROYBAL: During the Select Aging Committee hearing on July 23d you asked how the restructuring of the Office of Human Development Services would improve the management of programs authorized under the Older Americans Act. I believe that question is so important and so fundamental that I want to answer it immediately, rather than wait for the formal Departmental package to be transmitted to the Committee.

The restructuring makes several significant changes which, separately and cumulatively, will improve the execution of our responsibilities under the Act. The first of these changes is that forty staff are added to the Administration on Aging (AoA) complement, including twenty at Central Office and twenty in the Regional Offices. The Central Office staff will augment our efforts in research and training, long term care, and field management. The Regional Office staff will strengthen our capability to assess local service delivery systems and to work with State agencies to remedy deficiencies.

The second change relates to Title XX. AoA will now be intrinsically involved in the Administration of the Title XX program as it pertains to the elderly. Specifically, Aging staff will review the State Title XX Comprehensive Annual Services Plans, participate in the development of guidance, influence the evolution of standards and cooperate in the training of personnel. In view of the importance of the Title XX program, this involvement constitutes a major improvement in AoA's ability to serve as a focal point for the coordination of Federal programs for the elderly.

The third change is that AoA now has overall program responsibility for the elderly. Formerly this responsibility was shared by Title XX and AoA. Now, for example, program development in homemaker services for the elderly will be an AoA responsibility.

Finally, I would like to address the shift of AoA financial management staff to the Office of Financial Operations. This shift consolidates all Human Development Services financial staff in the Regional Administrator's office, and thereby produces considerable efficiency in our ability to provide timely and skilled financial technical assistance to our grantees. This kind of consolidation makes possible the reallocation of staff I have referred to above.

These changes significantly improve our ability to execute our responsibilities under the Older Americans Act.

Sincerely yours,

PATRICIA ROBERTS HARRIS.

The CHAIRMAN. The last question is from Mr. Green.

Mr. GREEN. Madam Secretary, I understand what you are trying to accomplish by setting up the Office of Fiscal Operations in the region, and I know the differing fiscal reviews by different arms of the Office of Human Development and different requirements, different staff imposed on various agencies has been a source of some discomfort by the grantees of HEW and now HHS.

On the other hand, I guess there is some concern expressed by the people in the field, and I think it underlies some of the questions you have heard today, as to whether it is really possible to separate program and fiscal responsibilities so that you can have a fiscal control by people who are not program managers in the first instance.

Would you care to comment?

Secretary HARRIS. I wonder if you can have effective fiscal control by people whose primary concern ought to be qualitative analysis.

I would say we do this in Government all the time, and not only in Government, we do it in all audited and properly managed institutions. We bring in forces that are not tied into the determination of substance in order to make certain that the fiscal proce-

dures that undergird the activities are properly dealt with, and I would say that what we are doing now should have been done earlier.

What we have demanded of the Commissioner on the Aging is that he dilute his concern for quality by doing what is basically ministerial, technical assistance, financial managing, and that should be done by financial managers and not by programmatic people. They have to know something about the program.

Mr. GREEN. Will this Office of Fiscal Operations be your internal auditors?

Secretary HARRIS. No; they are our first level monitors. Our internal auditors, as you know, are both our Office of Management and Budget and our Inspector General, but this is the kind of first level, hands-on assistance to beneficiaries to be sure that they are using the techniques that will be supportive of our concern for effective programs.

It is in every program. The people who are right at the level of program delivery look at the way the programs are delivered, not in order to find these people in default, but in order to prevent their being in default, to give them assistance.

Mr. GREEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Waldie, is there any comment you would like to make?

Mr. WALDIE. No, Mr. Chairman.

The CHAIRMAN. Thank you, Madam Secretary.

We are very grateful to you for your indulgence.

The committee will stand adjourned.

[Whereupon, at 4:35 p.m. the Select Committee on Aging adjourned.]

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